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THE

COMPILED LAWS

OF THE

STATE OF NEVADA.

BAR ASSOCIATION, DISTRICT OF COLUMBIA

EMBRACING

STATUTES OF 1861 TO 1873, INCLUSIVE.

PUBLISHED UNDER AUTHORITY OF LAW, BY

M. S. BONNIFIELD AND T. W. HEALY,

COMPILERS.

In Two Volumes.

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PREFACE.

It is not the province of the Compiler to enact laws, but to eliminate the repealed and obsolete statutes, and to collect and arrange in convenient form the laws now in force. So far as practicable we have placed all Acts on the same subject in the same chapter, and grouped together those on kindred subjects. Some Acts, however, relate to more than one subject, and might properly come under different chapters. In such case we have sought the most appropriate place. When any doubt arose as to the vitality of any Act, or part thereof, we incorporated it in the compilation. In some instances portions of sections will be found to be obsolete; but to have stricken them out would have served no good purpose, for, aside from the mutilation, the necessary explanatory notes would have occupied more space than the obsolete matter. The compilation was prepared and arranged for one volume only, otherwise the arrangement of the chapters might have been a little different. It embraces all statutes from eighteen hundred and sixty-one to eighteen hundred and seventy-three, inclusive, except special franchise Acts, and a few local Acts, not of general interest. References will be found to the latter. In addition to a full alphabetical index, we have given head notes and an analysis of the contents of chapters, which will greatly aid and facilitate the search for the law upon any given subject. The numerous references and notes of decisions will be found convenient and valuable. All amendments are incorporated in the Acts amended, and will be found in their appropriate places.

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NATURALIZATION LAWS.

NATURALIZATION LAWS.

Act approved April 14, 1802.
Act approved March 26, 1804.
Act approved March 3, 1813.
Act approved July 30, 1813.
Act approved March 22, 1816.
Act approved May 26, 1824.
Act approved May 24, 1828.
Act approved July 17, 1862.
Act approved July 14, 1870.

An Act to establish a uniform rule of naturalization, and to repeal the Acts heretofore passed on that subject.

[Approved April 14, 1802.]

SECTION 1.

What aliens may become citizens.

1. Renunciation of foreign allegiance.
2. Oath to support Constitution, and renouncing allegiance.
3. Residence, character, and attachment to the United States.
4. Renunciation of title to nobility. Alien enemy. Residents in 1795. Decree in naturalization to be recorded. Residents in 1798.

SECTION 2.

[Repealed May 24, 1828.]

SECTION 3.

What Courts have jurisdiction to naturalize.

SECTION 4.

Children of naturalized citizens are citizens. Of non-residents and proscribed persons.

SECTION 5.

[Repeals all former Acts.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

What aliens may become citizens.

SECTION 1. That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

Renunciation of foreign allegiance.

1. That he shall have declared, upon oath or affirmation before the Supreme, Superior, District, or Circuit Court of some one of the States, or of the Territorial districts of the United States, three years at least before his admission, that it was bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly by name the prince, potentate, State, or sovereignty whereof such alien may at the time be a citizen or subject. (1)

(1) Two years before admission is now sufficient. See Sec. 4 of Act of May 26, 1824.

An alien does not become a citizen of the United States by filing his declaration of intention to become a citizen. He does not acquire the full rights of a citizen until he has taken the final oath of citizenship.—Orosco v. Gagliardo, 22 Cal., p. 83.

Oath to support Constitution, and renouncing allegiance.

2. That he shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the Courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State, or sovereignty whatever, and particularly, by name, the prince, potentate, State, or sovereignty whereof before he was a citizen or subject, which proceeding shall be recorded by the Clerk of the Court.

Residence, character, and attachment to the United States.

3. That the Court, admitting such alien, shall be satisfied that he has resided within the United States five years at least, and within the State or Territory where such Court is at the time held, one year at least; and it shall further appear to their satisfaction that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; *provided*, that the oath of the applicant shall in no case be allowed to prove his residence.

Renunciation of title to nobility.

4. That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or State from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the Court to which his application shall be made, which renunciation shall be made and recorded in the said Court; *provided*, that no alien, who shall be a native, citizen, denizen, or subject of any country, State, or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States; *provided*, also, that any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth

Alien enemy.

Residents in 1795.

day of January, seventeen hundred and ninety-five, may be admitted to become a citizen on due proof made, to some one of the Courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least immediately preceding his application within the State or Territory where such Court is at the time held, and on his declaring on oath or affirmation that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly, by name, the prince, potentate, State, or sovereignty whereof he was before a citizen or subject; and, moreover, on its appearing, to the satisfaction of the Court, that during the said term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and when the alien applying for admission to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or State from whence he came, on his moreover making in the Court an express renunciation of his title or order of nobility, before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the Court, shall be recorded by the Clerk thereof; *and provided, also*, that any alien who was residing within the limits and under the jurisdiction of the United States at any time between the twenty-ninth day of January, seventeen hundred and ninety-five, and the eighteenth day of June, seventeen hundred and ninety-eight, may, within two years after the passing of this Act, be admitted to become a citizen without a compliance with the first condition above specified.

Decree in naturalization to be recorded.

Residents in 1798.

[SEC. 2 repealed by Act of May 24, 1828.]

SEC. 3. And whereas, doubts have arisen whether certain Courts of record in some of the States are included within the description of District or Circuit Courts: *Be it further enacted*, That every Court of record in any individual State having common law jurisdiction, and a seal and clerk, or prothonotary, shall be considered as a District Court within the meaning of this Act; and every alien who may have been naturalized in any such Court shall enjoy, from and after the passing of the Act, the same rights and privileges as if he had been naturalized in a District or Circuit Court of the United States.

What Courts have jurisdiction to naturalize.

SEC. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States; *provided*, that the right of citizenship shall not descend to persons whose

Children of naturalized citizens are citizens.

Of non-residents and proscribed persons.

fathers have never resided within the United States; *provided, also*, that no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen, as aforesaid, without the consent of the Legislature of the State in which such person was proscribed.

Repeals all former Acts.

SEC. 5. *And be it further enacted*, That all Acts, heretofore passed respecting naturalization, be and the same are hereby repealed.

Act in addition to above Act.

[Approved March 26, 1804.]

SECTION 1.

Free white alien residents in 1802, and after 1798.

SECTION 2.

Widow and children of aliens, who die before perfecting naturalization, are citizens.

Free white alien residents in 1802, and after 1798.

SECTION 1. That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, seventeen hundred and ninety-eight, and the fourteenth day of April, eighteen hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States without a compliance with the first condition specified in the first section of the Act entitled "An Act to establish a uniform rule of naturalization, and to repeal the Acts heretofore passed on that subject."

Widow and children of aliens, who die before perfecting naturalization, are citizens.

SEC. 2. *And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original Act, and who shall have pursued the directions prescribed in the second section of the said Act, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all the rights and privileges as such upon taking the oaths prescribed by law.

An Act for the regulation of seamen on board the public and private vessels of the United States.

[Approved March 3, 1813.]

[Previous sections are not applicable.]

SECTION 12.

What continued residence in the United States necessary.

SECTION 13.

Forging certificate of citizenship a felony.

SEC. 12. *And be it further enacted,* That no person who shall arrive in the United States, from and after the time when this Act shall take effect, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission as aforesaid, have resided within the United States. ([a])

What continued residence in the United States necessary.

(a) The words "without being at any time during the said five years out of the territory of the United States," formed a part of this section as it originally stood, but were stricken out by Act of June twenty-sixth, eighteen hundred and forty-eight.

SEC. 13. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, any certificate or evidence of citizenship referred to in this Act, or shall pass, utter, or use as true, any false, forged, or counterfeited certificate of citizenship, or shall make sale or dispose of any certificate of citizenship to any person other than the person for whom it was originally issued, and to whom it may of right belong, every such person shall be deemed and adjudged guilty of felony, and, on being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labor for a period of not less than three or more than five years, or be fined in a sum not less than five hundred dollars nor more than one thousand dollars, at the discretion of the Court taking cognizance thereof.

Forging certificate of citizenship a felony.

Act supplementary to former Acts.

[Approved July 30, 1813.]

SECTION 1.

Though enemies, alien residents in 1812 may become citizens; removal not affected.

SECTION 1. That persons resident within the United States or the Territories thereof, on the eighteenth day of June, in the year eighteen hundred and twelve, who had before that day made a declaration according to law of their intentions to become citizens of the United States, or who by the existing laws of the United States were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies at the time, and in the manner prescribed by the laws heretofore passed on that subject; *provided,* that nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Though enemies, alien residents in 1812 may become citizens.

Removal not affected.

Act relative to evidence in cases of naturalization.

[Approved March 22, 1816.]

SECTION 1.

[Repealed May 24, 1828.]

SECTION 2.

Persons resident prior to 1802 and after 1798. Proof other than certificate.

Persons resident prior to 1802 and after 1798.

SEC. 2. *Provided, and be it enacted,* That nothing herein contained shall be construed to exclude from admission to citizenship any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the 18th day of June, 1798, and the 14th day of April, 1802, and who, having continued to reside therein without having made any declaration of intention before a Court of record as aforesaid, may be entitled to become a citizen of the United States according to the Act of the 26th of March, 1804, entitled "An Act in addition to an Act entitled an Act to establish a uniform rule of naturalization, and to repeal the Acts heretofore passed on that subject." Whenever any person with a certificate of such declaration of intention as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the Court that the applicant was residing within the limits and under the jurisdiction of the United States before the 14th day of April, 1802, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens (1) of the United States, which citizens shall be named in record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the Court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Proof other than certificate.

(1) More witnesses than one would seem to be required. See 7 Hill, New York, p. 137.

Act in further addition to former Acts.

[Approved May 26, 1824.]

SECTION 1.

Free white alien minors resident. Declaration must be made at time of admission.

SECTION 2.

Previously obtained certificate valid.

SECTION 3.

Bona fide declaration of intention valid.

SECTION 4.

Declaration of intention, what sufficient.

Free white alien minors resident.

SECTION 1. That any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the Act to which this is in addition, three years previous to his admission; *provided,* such alien shall make the declaration required therein at the time of his or her admission, and shall further declare, on oath, and prove to the satisfaction of the Court, that for three years next preceding it has been the bona fide intention of such alien to become a citizen of the United States, and shall, in all other respects, comply with the laws in regard to naturalization.

Declaration must be made at time of admission.

Previously obtained certificate valid.

SEC. 2. *And be it further enacted,* That no certificates of citizenship or naturalization heretofore obtained from any Court of record within the United States shall be deemed invalid in consequence of an omission to comply with the requisition of the first section of the Act entitled "An Act relative to evidence in case of naturalization," passed the twenty-second day of March, eighteen hundred and sixteen.

Bona fide declaration of intention valid.

SEC. 3. *And be it further enacted,* That the declaration required by the first condition, specified in the first section of the Act to which this is in addition, shall, if the same has been bona fide made before the Clerks of either of the Courts in the said condition named, be as valid as if it had been made before the said Courts respectively.

Declaration of intention, what sufficient.

SEC. 4. *And be it further enacted,* That a declaration by an alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the Act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition, anything in the said Act, or in any subsequent Act, to the contrary notwithstanding.

An Act amending former Acts.

[Approved May 24, 1828.]

SECTION 1.

Repeals certain sections of other Acts.

SECTION 2.

Free white alien residents in 1812; what proof required, etc.

[Sec. 1 repeals Sec. 2 of Act of April, 1802, and also Sec. 1 of Act of March 22, 1816.]

Free white alien residents in 1812; what proof required, etc.

SECTION 2. *And be it further enacted*, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, between the fourteenth day of April, eighteen hundred and two, and the eighteenth day of June, eighteen hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become a citizen; *provided*, that whenever any person without a certificate of such declaration of his intention shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the Court that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, eighteen hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the Court admitting the applicant, otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Act to define pay and emoluments of certain officers of the army, and for other purposes.

[Approved July 17, 1862.]

[Secs. 1 to 20, inclusive, do not relate to naturalization.]

SECTION 21.

Alien United States soldiers may become citizens, when. One year's residence only required.

SECTION 21. Any alien, of the age of twenty-one years and upwards, who has enlisted, or shall enlist in the armies of the United States, either the regular or volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become a citizen of the United States, and he shall not be required to prove more than one year's residence within the United States previous to his application to become a citizen; and the Court admitting such alien, shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States, as aforesaid.

Alien United States soldiers may become citizens, when.

One year's residence only required.

An Act to amend the naturalization laws, and to punish crimes against the same, and for other purposes.

[Approved July 14, 1870.]

SECTION 1.

Taking false oath, etc., is perjury; penalty.

SECTION 2.

Doing certain acts declared felony; penalty for.

SECTION 3.

Using fraudulent certificate, etc., a misdemeanor.

SECTION 4.

Applies to all proceedings; jurisdiction of offenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any oath, affirmation, or affidavit, shall be made or taken under or by virtue of any Act or law relating to the naturalization of aliens, or in any proceedings under such Acts or laws, and any person or persons taking or making such oath, affirmation, or affidavit, shall knowingly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof shall upon conviction thereof be sentenced to imprisonment for a term not exceeding five years and not less than one year, and to a fine not exceeding one thousand dollars.

Taking false oath, etc., is perjury; penalty.

SEC. 2. *And be it further enacted,* That if any person applying to be admitted a citizen, or appearing as a witness for any such person, shall knowingly personate any other person than himself, or falsely appear in the name of a deceased person, or in an assumed or fictitious name, or if any person shall falsely make, forge, or counterfeit any oath, affirmation, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law or Act relating to or providing for the naturalization of aliens; or

Doing certain acts declared felony.

Same.

shall utter, sell, dispose of, or use as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, affirmation, notice, certificate, order, record, signature, instrument, paper, or proceeding, as aforesaid; or sell or dispose of to any person other than the person from whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen; or if any person shall in any manner use for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing such person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; or if any person shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person; or use, or attempt to use, or aid, or assist, or participate in the use of any certificate of citizenship knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or if any person, and without lawful excuse, shall knowingly have or be possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeit, with intent unlawfully to use the same; or if any person shall obtain, accept, or receive any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; or if any person who has been or may be admitted to be a citizen shall, on oath or affirmation, or by affidavit, knowingly deny that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law: every person so offending shall be deemed and adjudged guilty of felony, and, on conviction thereof, shall be sentenced to be imprisoned and kept at hard labor for a period not less than one year nor more than five years, or be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed, in the discretion of the Court. And every person who shall knowingly and intentionally aid or abet any person in the commission of any such felony, or attempt to do any act hereby made felony, or counsel, advise, or procure, or attempt to procure, the commission thereof, shall be liable to indictment and punishment in the same manner and to the same extent as the principal party of such felony, and such person may be tried and convicted thereof without the previous conviction of such principal.

Penalty for.

Using fraudulent certificate, etc., a misdemeanor.

SEC. 3. *And be it further enacted*, That any person who shall knowingly use any certificate of naturalization heretofore granted by any Court, or which shall hereafter be granted, which has been, or shall be, procured through fraud or by false evidence, or has been or shall be issued by the clerk, or any other officer of the Court, without any appearance and hearing of the applicant in Court, and without lawful authority; and any person who shall falsely represent himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in due course of law, shall be sentenced to pay a fine of not exceeding one thousand dollars, or be imprisoned not exceeding two years, either or both, in the discretion of the Court taking cognizance of the same.

Applies to all proceedings.

Jurisdiction of offenses.

SEC. 4. *And be it further enacted,* That the provisions of this Act shall apply to all proceedings had or taken, or attempted to be had or taken, before any Court in which any proceedings for naturalization shall be commenced; and the Courts of the United States shall have jurisdiction of all offenses under the provisions of this Act, in or before whatsoever Court or tribunal the same shall have been committed.

AUTHENTICATION OF RECORDS.

AUTHENTICATION

OF

PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS AS BETWEEN THE STATES.

Act approved May 26, 1790.
Act approved March 27, 1804.
Act approved March 2, 1849.

An Act to prescribe the mode in which the public Acts, records, and judicial proceedings in each State shall be authenticated so as to take effect in every other State.

[Approved May 26, 1790.]

SECTION 1.

Legislative Acts, records, and judicial proceedings, how authenticated.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Legislative Acts, records, and judicial proceedings, how authenticated.

SECTION 1. That the Acts of the Legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the Courts of any State shall be proved or admitted in any other Court within the United States, by the attestation of the Clerk and the seal of the Court annexed, if there be a seal, together with the certificate of the Judge, Chief Justice, or presiding magistrate, as the case may be, that the said attestation is in due form; and the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from whence the said records are or shall be taken. (1)

(1) A certificate of exemplification of a judgment rendered in another State, when attested by the Clerk under the seal of the Court, and when the presiding Judge of the Court certifies

that the attestation is in due form of law, is sufficient to sustain an action upon the judgment in another State.—Thompson v. Marrow, 1 Cal., p. 428.

It is only necessary that the certificate should state the main facts which are made necessary by the Act, when the offices of Judge and Clerk are both vested in one person (as in the Surrogate's Court in the City and County of New York).—Low v. Burrows, 12 Cal., p. 181.

Act supplementary to the above Act.

[Approved March 27, 1804.]

SECTION 1.

Office books, etc., not pertaining to Courts, how proved.

SECTION 2.

Applies to Acts, records, etc., of Territories as well.

Office books, etc., not pertaining to Courts, how proved

SECTION 1. That from and after the passage of this Act, all records and exemplifications of office books which are or may be kept in any public office of any State not appertaining to a Court, shall be proved or admitted in any other Court or office in any other State, by the attestation of the keeper of said records or books, and the seal of his office thereto annexed, if there be a seal, together with the certificate of the presiding Justice of the Court of the county or district, as the case may be, in which such office is or may be kept, or of the Governor, the Secretary of State, the Chancellor, or the keeper of the great seal of the State, that the said attestation is in due form and by the proper officer; and the said certificate, if given by the presiding Justice of a Court, shall be further authenticated by the Clerk or Prothonotary of the said Court, who shall certify, under his hand and the seal of his office, that the said presiding Justice is duly commissioned and qualified; or, if the said certificate be given by the Governor, the Secretary of State, the Chancellor, or keeper of the great seal, it shall be under the great seal of the State in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every Court and office within the United States as they have by law or usage in the Courts or offices of the State from whence the same are or shall be taken.

Applies to Acts, records, etc., of Territories as well.

SEC. 2. All the provisions of this Act, and the Act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, Courts, and officers of the respective Territories of the United States and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, Courts, and offices of the several States.

An Act to amend an Act for authenticating certain records.

[Approved March 2, 1849.]

SECTION 1.

Custodians of laws, etc., of foreign governments; how to certify the same.

Custodians of laws, etc, of foreign governments; how to certify the same.

SECTION 1. That it may and shall be lawful for the keepers or persons having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government, or its agents, relating to the title to lands claimed by or under the United States, on the application of one of the heads of one of the departments, the Solicitor of the Treasury, or the Commissioner of the General Land Office, to authenticate the same under his hand and seal, and certify the same to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents; and when the same shall be certified by an American minister or consul, under his hand and seal of office, or by a Judge of one of the United States Courts, under his hand and seal, to be true copies of the originals, the same shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file the same in his office and cause it to be recorded in a book to be kept for that purpose. A copy of said laws, judgments, orders, decrees, journals, correspondence, or other public documents so filed, or of the same so recorded in said book, may be read in evidence in all Courts where the title to land claimed by or under the United States may come into question, equally with the originals thereof.

ELECTION OF UNITED STATES SENATOR.

ELECTION OF UNITED STATES SENATOR.

An Act to regulate the times and manner of holding elections for Senators in Congress.

[Approved July 25, 1866.]

SECTION 1.

State Legislatures to elect; mode of election.

SECTION 2.

Election to fill vacancy.

SECTION 3.

Election to be certified to the Senate.

State Legislature to elect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress in the place of such Senator so going out of office, in the following manner: Each house shall openly, by a viva voce of each member present, name one person for Senator in Congress from said State, and the name of the person so voted for, who shall have a majority of the whole number of votes cast in each house, shall be entered on the journal of each house by the clerk or secretary thereof; but if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal. At twelve o'clock, meridian, of the day following that on which proceedings are required to take place, as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person shall have received a majority of all the votes in each house, such person shall be declared duly elected Senator to represent said State in the Congress of the United States; but if the same person shall not have received a majority of the votes in each

Mode of election.

house, or if either house shall have failed to take proceedings as required by this Act, the joint assembly shall then proceed to choose, by a viva voce vote of each member present, a person for the purpose aforesaid, and the person having the majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly shall meet at twelve o'clock, meridian, of each succeeding day during the session of the Legislature, and take at least one vote, until a Senator shall be elected.

Election to fill vacancy.

SEC. 2. *And be it further enacted*, That whenever, on the meeting of the Legislature of any State, a vacancy shall exist in the representation of such State in the Senate of the United States, said Legislature shall proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy, in the manner hereinbefore provided for the election of a Senator for a full term; and if a vacancy shall happen during the session of the Legislature, then on the second Tuesday after the Legislature shall have been organized and shall have notice of such vacancy.

Election to be certified to the Senate.

SEC. 3. *And be it further enacted*, That it shall be the duty of the Governor of the State from which any Senator shall have been chosen as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States, which certificate shall be countersigned by the Secretary of State of the State.

CONSTITUTION OF THE STATE OF NEVADA.

CONSTITUTION OF THE STATE OF NEVADA.

PRELIMINARY ACTION.

Constitution of the United States adopted.

ORDINANCE.

1. Slavery prohibited.
2. Toleration of religious sentiment.
3. Right and title to public lands disclaimed. Taxation of lands of non-residents. Lands or property of the United States not to be taxed.
4. Preamble.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 1. Inalienable rights.
2. Paramount allegiance; powers of Federal Government.
3. Right of trial by jury.
4. Religious worship.
5. Habeas corpus.
6. Bail, fines, and unusual punishment; witnesses unreasonably detained.
7. When bailable.
8. Capital or infamous crimes, how tried; when property may be taken without compensation.
9. Freedom of speech and of the press.
10. Right to assemble and petition.
11. Standing army not to be maintained.
12. Quartering of soldiers.
13. Apportionment of representation.
14. Privileges of debtors.
15. Ex post facto law.
16. Rights of bona fide residents.
17. Slavery prohibited.
18. Rights against seizure and searches.
19. Treason, of what to consist.
20. Rights retained by the people.

ARTICLE II.—RIGHT OF SUFFRAGE.

SECTION 1. Right of suffrage, who entitled.
2. Residence, when not gained or lost.

SECTION 3. Right of suffrage by persons in military service.
4. Elector, not to be arrested.
5. Elections.
6. Registration of electors required.
7. Poll tax.
8. Qualified voters.

ARTICLE III.—DISTRIBUTION OF POWERS.

SECTION 1. Powers restricted.

ARTICLE IV.—LEGISLATIVE DEPARTMENT.

SECTION 1. Vested in Senate and Assembly.
2. Sessions, biennial.
3. Assemblymen, when chosen; term of office.
4. Senators, when chosen; term of office.
5. Senators and Assemblymen, qualification of; number of Senators.
6. Each House to judge of election and qualification of members; may punish and expel.
7. May punish for contempts, etc.
8. Not eligible to appointment to civil office.
9. Who not eligible to office.
10. When disqualified.
11. Members exempt from arrest.
12. Vacancies, how filled.
13. Quorum.
14. Journal required.
15. Doors may be closed.
16. Where bills may originate.
17. Laws, what to embrace.
18. Bills, how read; how passed; how signed.
19. Money, how to be drawn.
20. Legislation restricted.
21. Laws to be general.
22. Suits against the State.
23. Enacting clause.
24. Lotteries prohibited.
25. County and township government.
26. County Commissioners.
27. Jury service; elections.
28. When money may be drawn from Treasury.
29. Time of sessions.
30. Homesteads exempt from forced sale.
31. Property of wife; registration of.
32. Officers, provision to be made for election of.
33. Compensation.
34. United States Senators, how elected.
35. Bill, when to become a law.

ARTICLE V.—EXECUTIVE DEPARTMENT.

SECTION 1. Executive power.
2. Governor, election and term of office.
3. Who eligible.
4. Returns of election, how made; who elected.

SECTION 5. Commander-in-Chief.
6. Duties of Governor.
7. Execution of laws.
8. Vacancies in office, how filled.
9. May convene Legislature.
10. Messages to Legislature.
11. Power to adjourn Legislature.
12. Who not eligible to office of Governor.
13. Powers of Governor as to fines, forfeitures, and reprieves.
14. Who may remit fines and grant pardons.
15. State seal.
16. Grants and commissions to be in name of the State.
17. Lieutenant Governor, how elected.
18. Acting Governor, when.
19. Secretary of State, Controller, Treasurer, and Attorney General, who eligible.
20. Duties of Secretary of State.
21. Prison Commissioners; Board of Examiners.
22. Duties.

ARTICLE VI.—JUDICIAL DEPARTMENT.

SECTION 1. Judicial power vested.
2. Supreme Court; quorum.
3. Election of Judges; term of office; Chief Justice.
4. Jurisdiction of Court.
5. Judicial districts; may be altered; election of District Judges; one Judge for each district.
6. Jurisdiction and powers.
7. Terms of Supreme and District Courts, when and where held.
8. Justices of the Peace; jurisdiction restricted; criminal jurisdiction; concurrent jurisdiction; appeals; Courts of record.
9. Municipal Courts.
10. Judicial officers not to receive fees.
11. Judges ineligible to other offices during their term.
12. Charge to juries.
13. Style of process.
14. Form of civil action.
15. Judges' salaries, how paid.
16. Court fee.
17. Office, when vacated.
18. When officers superseded.

ARTICLE VII.—IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. Impeachment, how tried; Chief Justice to preside; conviction.
2. Who liable to impeachment.
3. Justices of Supreme Court and District Judges may be removed.
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ARTICLE VIII.—MUNICIPAL AND OTHER CORPORATIONS.

SECTION 1. Special legislation prohibited.
2. Taxation, what subject to.
3. Dues may be secured.

SECTION 4. Corporations subject to laws, etc.
5. Corporations may sue.
6. Bank notes prohibited.
7. Right of way.
8. Organization of cities and towns.
9. State not to donate or loan.
10. County, etc., not to become stockholder.

ARTICLE IX.—FINANCE AND STATE DEBT.

SECTION 1. Fiscal year.
2. Legislature to provide for levying an annual tax.
3. State may contract debts; restriction of debt; annual tax; proceeds, how appropriated; when contract void.
4. State not to assume indebtedness.

ARTICLE X.—TAXATION.

SECTION 1. Taxation to be equal.

ARTICLE XI.—EDUCATION.

SECTION 1. Superintendent, when elected; term of office.
2. School system to be uniform.
3. Lands appropriated for educational purposes; sale, how made; proviso.
4. University.
5. Normal schools.
6. Special tax.
7. Regents.
8. Duties of Regents.
9. Sectarianism prohibited.

ARTICLE XII.—MILITIA.

SECTION 1. Organization of militia.
2. Power to call out.

ARTICLE XIII.—PUBLIC INSTITUTIONS.

SECTION 1. Benevolent institutions to be fostered.
2. State Prison.
3. Aged and infirm, counties to provide for.

ARTICLE XIV.—BOUNDARY.

SECTION 1. Boundary of State; addition may be added.

ARTICLE XV.—MISCELLANEOUS PROVISIONS.

SECTION 1. Seat of government.
2. Oath of office.
3. Who not eligible.
4. Perpetuities.
5. General election.
6. Number of members of Legislature restricted.
7. County offices, where held.
8. Publication of laws, etc.
9. Salaries may be increased or diminished.
10. Officers, how chosen.
11. Tenure of office may be declared.

SECTION 12. State offices, where held.
13. Enumeration of inhabitants.
14. Plurality of votes to constitute choice.

ARTICLE XVI.—AMENDMENTS.

SECTION 1. Amendments, how made.
2. Revision of Constitution; Convention; majority of electors.

ARTICLE XVII.—SCHEDULE.

SECTION 1. Rights, etc., to continue.
2. Laws to remain in force.
3. Fines, etc., to enure to State.
4. Recognizances to remain valid; bonds may be sued on; property, records, etc., of Territory to vest in State; criminal prosecutions; offenses committed against laws of Territory; actions, etc., to be continued.
5. Salaries of officers; pay of Senators and Assemblymen; officers not to receive perquisites.
6. Apportionment of Senators and Assemblymen.
7. Territorial indebtedness assumed.
8. Term of State officers.
9. Term of Senators.
10. Term of Senators fixed.
11. Term of Assemblymen.
12. Sessions of Legislature.
13. County officers continued in office; township officers; proviso; county officers of Lander County.
14. Territorial officers continued in office until time for qualification of State officers.
15. Terms of Court determined.
16. Salaries of District Judges.
17. Salary of District Judge may be changed.
18. State officers, when to qualify; expiration of term.
19. Judges, when to qualify.
20. Officers to be commissioned by the Governor; Controller and Treasurer to execute bond.
21. Support of county, town, city, and village officers.
22. Vacancy in office of Justice of Supreme Court, District Judge, or other State officer, how filled.
23. Cases in Probate Courts to be transferred to Districts Courts.
24. Taxation restricted.
25. Roop and Washoe Counties.
26. Provision for publication of debates, etc.; payment of official reporter; compensation.

ELECTION ORDINANCE.

SECTION 1. Governor to issue proclamation for submission of Constitution.
2. Qualified voters.
3. What officers may be voted for.
4. How election to be conducted.
5. Returns, how made.

SECTION 6. Board of Canvassers; Governor to publish abstract of vote, and issue proclamation; Constitution established.
7. Votes of soldiers, how taken.
8. Governor to classify return lists.
9. Time of holding election: under whose direction.
10. Ballot, what to contain; officer's duty.
11. Returns, when and where to be made.
12. Form of returns.
13. Blank returns to be furnished.
14. Provisions to apply to future elections; delegates to Convention.

PRELIMINARY ACTION.

Preamble.

1. WHEREAS, The Act of Congress, approved March twenty-first, A. D. eighteen hundred and sixty-four, "to enable the People of the Territory of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," requires that the members of the Convention for framing such Constitution shall, after organization, on behalf of the people of said Territory, adopt the Constitution of the United States; therefore, be it

Constitution of United States adopted.

2. *Resolved*, That the members of this Convention, elected by the authority of the aforesaid Enabling Act of Congress, assembled in Carson City, the Capital of said Territory of Nevada, and immediately subsequent to its organization, do adopt, on behalf of the people of said Territory, the Constitution of the United States.

ORDINANCE.

Ordinance.

3. In obedience to the requirements of an Act of the Congress of the United States, approved March twenty-first, A. D. eighteen hundred and sixty-four, to enable the people of Nevada to form a Constitution and State Government, this Convention, elected and convened in obedience to said Enabling Act, do ordain as follows—and this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Nevada:

Slavery prohibited.

First—There shall be in this State neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.

Toleration of religious sentiment.

Second—That perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested, in person or property, on account of his or her mode of religious worship.

Right and title to public lands disclaimed. Taxation of lands of non-residents. Lands or property of the United States not to be taxed.

Third—That the people inhabiting said Territory do agree, and declare, that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that lands belonging to citizens of the United States, residing without the said State, shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.

PREAMBLE.

4. We, the people of the State of Nevada, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquillity, and form a more perfect Government, do establish this **Preamble.**

CONSTITUTION.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness. **Inalienable rights.**

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, in the exercise of all its constitutional powers, as the same have been, or may be, defined by the Supreme Court of the United States, and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert, or resist the supreme authority of the Government of the United States. **Paramount allegiance.** The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority. **Powers of Federal Government.**

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law; and in civil cases, if three fourths of the jurors agree upon a verdict, it shall stand, and have the same force and effect as a verdict by the whole jury; *provided*, the Legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this provision. **Right of trial by jury.**

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of **Religious worship.**

licentiousness, or justify practices inconsistent with the peace or safety of this State.

Habeas corpus.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Bail.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

When bailable.

SEC. 7. All persons shall be bailable by sufficient sureties; unless, for capital offenses, when the proof is evident or the presumption great.

Capital or infamous crimes, how tried.

When property may be taken without compensation.

SEC. 8. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature), except on presentment or indictment of a Grand Jury, and in any trial, in any Court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made. (1)

(1) "Due process of law" requires that a party shall be properly brought into Court, and, when there, shall have a right to set up any lawful defense to any proceeding against him. The Legislature, under pretense of regulating pleading, cannot deprive a party of substantial rights.—Wright v. Cradlebaugh, 3 Nev., p. 341.

Freedom of speech and of the press

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions, and civil actions for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted or exonerated.

Right to assemble and petition.

SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

Standing army not to be maintained

SEC. 11. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

Quartering of soldiers.

SEC. 12. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner to be prescribed by law.

SEC. 13. Representation shall be apportioned according to population. Apportionment of representation.

SEC. 14. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in cases of fraud, libel, or slander, and no person shall be imprisoned for a militia fine in time of peace. Privileges of debtors.

SEC. 15. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed. Ex post facto law.

SEC. 16. Foreigners who are, or who may hereafter become, bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens. Rights of bona fide residents.

SEC. 17. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State. Slavery prohibited.

SEC. 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized. Rights against seizures and searches.

SEC. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. And no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court. Treason, of what to consist.

SEC. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people. Rights retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every white male citizen of the United States (not laboring under the disabilities named in this Constitution), of the age of twenty-one years and upwards, who shall have actually, and not constructively, resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; *provided*, that no person who has been or may be convicted of treason or felony in any State or Territory of the United States, unless restored to civil rights; and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government; and no idiot or insane person shall be entitled to the privilege of an elector. Right of suffrage, who entitled.

SEC. 2. For the purpose of voting, no person shall be deemed

Residence, when not gained or lost.

to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

Right of suffrage by persons in military service.

SEC. 3. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same, who may be in the military or naval service of the United States; *provided*, the votes so cast shall be made to apply to the county and township of which said voters were bona fide residents at the time of their enlistment; *and, provided further*, that the payment of a poll tax or a registration of such voters shall not be required as a condition to the right of voting. Provision shall be made by law regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this Constitution.

Elector not to be arrested.

SEC. 4. During the day on which any general election shall be held in this State, no qualified elector shall be arrested by virtue of any civil process.

Elections.

SEC. 5. All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof, shall be *viva voce*.

Registration of electors required.

SEC. 6. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage, as hereby established, to preserve the purity of elections and to regulate the manner of holding and making returns of the same; and the Legislature shall have power to prescribe by law any other or further rules or oaths as may be deemed necessary, as a test of electoral qualification.

Poll tax.

SEC. 7. The Legislature shall provide by law for the payment of an annual poll tax of not less than two nor exceeding four dollars from each male person resident in the State, between the ages of twenty-one and sixty years (uncivilized American Indians excepted), one half to be applied for State, and one half for county, purposes; and the Legislature may, in its discretion, make such payment a condition to the right of voting.

Qualified voters.

SEC. 8. All persons qualified by law to vote for representatives to the General Assembly of the Territory of Nevada on the twenty-first day of March, A. D. eighteen hundred and sixty-four, and all other persons who may be lawful voters in said Territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution.

ARTICLE III.

DISTRIBUTION OF POWERS.

Powers restricted.

SECTION 1. The powers of the Government of the State of Nevada shall be divided into three separate departments—the

Legislative, the Executive, and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Vested in Senate and Assembly.

SECTION 1. The Legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated "The Legislature of the State of Nevada," and the sessions of such Legislature shall be held at the seat of Government of the State.

Sessions, biennial.

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday of January next ensuing the election of members of the Assembly, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation.

Assemblymen, when chosen. Term of office.

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, and their term of office shall be two years from the day next after their election.

Senators, when chosen. Term of office.

SEC. 4. Senators shall be chosen at the same time and places as members of the Assembly, by the qualified electors of their respective districts, and their term of office shall be four years from the day next after their election.

Senators and Assemblymen, qualifications of. Number of Senators.

SEC. 5. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one third nor more than one half of that of the members of the Assembly.

Right to judge of qualification. May punish and expel.

SEC. 6. Each House shall judge of the qualifications, elections, and returns of its own members, choose its own officers (except the President of the Senate), determine the rules of its proceedings, and may punish its members for disorderly conduct, and with the concurrence of two thirds of all the members elected, expel a member.

May punish for contempts, etc.

SEC. 7. Either House, during the session, may punish, by imprisonment, any person not a member who shall have been guilty of disrespect to the House by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

Not eligible to appointment to civil office.

SEC. 8. No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

Who not eligible to office.

SEC. 9. No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that Postmasters whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office. (1)

(1) A person holding the office of United States District Attorney, on the day of election, is incapable of being chosen to the office of Attorney General of the State.—State ex rel. Nourse v. Clark, 3 Nev., p. 566.

Sec. 9 of Art. IV of the Constitution of Nevada, which declares "that no person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State," is not confined to members of the Legislature, but is applicable to all officers of State.—Id.

A person holding a civil office under the United States can resign such office without the consent of the appointing power, or the acceptance by it of such resignation. It is not in the power of the Executive to compel any civil officer to remain in office.—Id.

When disqualified. SEC. 10. Any person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or who may be convicted of having given or offered a bribe to procure his election or appointment to office, or received a bribe to aid in the procurement of office for any other person, shall be disqualified from holding any office of profit or trust in this State; and the Legislature shall, as soon as practicable, provide by law for the punishment of such defalcation, bribery, or embezzlement as a felony.

Members exempt from arrest. SEC. 11. Members of the Legislature shall be privileged from arrest on civil process during the session of the Legislature, and for fifteen days next before the commencement of each session.

Vacancies, how filled. SEC. 12. When vacancies occur in either House, the Governor shall issue writs of election to fill such vacancy.

Quorum. SEC. 13. A majority of all the members elected to each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may prescribe.

Journal required. SEC. 14. Each House shall keep a journal of its own proceedings, which shall be published, and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the journal.

Doors may be closed. SEC. 15. The doors of each House shall be kept open during its session, except the Senate, while sitting in executive session; and neither shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be holding their sessions.

Where bills may originate. SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one may be amended in the other.

Laws, what to embrace. SEC. 17. Each law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the Act as revised, or section as amended, shall be reënacted and published at length.

SEC. 18. Every bill shall be read by sections on three several days in each House, unless, in case of emergency, two thirds of the House where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journals of each House; and a majority of all the members elected to each House shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective Houses, and by the Secretary of the Senate and Clerk of the Assembly. **Bills, how read.** **How passed.** **How signed.**

SEC. 19. No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the Legislature. **Money, how to be drawn.**

SEC. 20. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: **Legislation restricted.**

Regulating the jurisdiction and duties of Justices of the Peace and of Constables;

For the punishment of crimes and misdemeanors;

Regulating the practice of Courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

Vacating roads, town plots, streets, alleys, and public squares;

Summoning and impaneling Grand and petit Juries and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers;

For the assessment and collection of taxes for State, county, and township purposes;

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities.

SEC. 21. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State. **Laws to be general.**

SEC. 22. Provision may be made by general law for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution. **Suits against the State.**

SEC. 23. The enacting clause of every law shall be as follows: "The People of the State of Nevada, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill. **Enacting clause.**

Lotteries prohibited.

SEC. 24. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

County and township government.

SEC. 25. The Legislature shall establish a system of county and township government, which shall be uniform throughout the State.

County Commissioners.

SEC. 26. The Legislature shall provide by law for the election of a Board of County Commissioners in each county, and such County Commissioners shall, jointly and individually, perform such duties as may be prescribed by law.

Jury service.

SEC. 27. Laws shall be made to exclude from serving on juries all persons not qualified electors of this State, and all persons who shall have been convicted of bribery, perjury, forgery, larceny, or other high crimes, unless restored to civil rights; and laws shall be passed regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

Elections.

When money may be drawn from Treasury.

SEC. 28. No money shall be drawn from the State Treasury as salary or compensation to any officer or employé of the Legislature, or either branch thereof, except in cases where such salary or compensation has been fixed by a law in force prior to the election or appointment of such officer or employé, and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employé of the Legislature, or either branch thereof, at such session; *provided*, that this restriction shall not apply to the first session of the Legislature.

Time of sessions.

SEC. 29. The first regular session of the Legislature, under this Constitution, may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session, convened by the Governor, exceed twenty days.

Homesteads exempt from forced sale.

SEC. 30. A homestead, as provided by law, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; *provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife: and laws shall be enacted providing for the recording of such homestead within the county in which the same shall be situated.

Property of wife.

SEC. 31. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

[illegible]

[illegible]

SEC. 32. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be ex officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, and fix, by law, their duties and compensation. County Clerks shall be ex officio

Clerks of the Courts of record, and of the Boards of County Commissioners, in and for their respective counties. (1)

(1) When language is used in the Constitution capable of two interpretations, and there is nothing in the general context of the instrument to determine which interpretation best conforms to the intention of the Convention, then resort must be had to a strict grammatical construction of the language to determine its effect.—Vesey v. Herman, 1 Nev., p. 36.

Sec. 32, Art. IV, of the Constitution construed.—Id.

There are certain county offices designated in the Constitution. These offices cannot be abolished without a constitutional change, nor the incumbents removed prior to January, 1867.—Nevada v. Tilford, 1 Nev., p. 240.

Other county offices can be created or abolished at the will of the Legislature. If the office is abolished, dees not the officer cease to exist as such?—Id.

SEC. 33. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public Treasury; but no increase of such compensation shall take effect during the term for which the members of either House shall have been elected; *provided,* that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of sixty dollars for any general or special session, to each member; *and, furthermore provided,* that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officers, receive an additional allowance of two dollars per diem. Compensation.

SEC. 34. In all elections for United States Senators, such elections shall be held in joint Convention of both Houses of the Legislature. It shall be the duty of the Legislature which convenes next preceding the expiration of the term of such Senator, to elect his successor. If a vacancy in such Senatorial representation from any cause occur, it shall be the duty of the Legislature then in session, or at the succeeding session thereof, to supply the vacancy. If the Legislature shall at any time, as herein provided, fail to unite in a joint Convention within twenty days after the commencement of the session of the Legislature for the election of such Senator, it shall be the duty of the Governor, by proclamation, to convene the two Houses of the Legislature in joint Convention within not more than five days from the publication of such proclamation, and the joint Convention when so convened shall proceed to elect the Senator as herein provided. United States Senators, how elected.

SEC. 35. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it with his objections, to the House in which it originated, which House shall cause such objections to be entered upon its journal, and proceed to reconsider it. If, after such reconsideration, [illegible] it again pass both Houses by yeas and nays, by a vote of two thirds of the members elected to each House, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him (Sunday excepted), exclusive of the day on which he received it, the same shall be a law in like manner as if he had signed it, unless the Legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the Governor, within ten days next after the adjournment (Sundays excepted), shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two thirds of the members elected to each branch of the Legislature, upon a vote taken by yeas and nays, to be entered upon the Journals of each House, it shall become a law. (1)

(1) Without the express approval of the Governor, an Act of the Legislature can only become a law in two cases: first, when it is passed over his objections by a two-thirds vote of each House; second, when he fails to return a bill with his objections within the time prescribed by the Constitution.—Birdsall v. Carrick, 3 Nev., p. 154.

When the Governor in due time sends back a bill which has been submitted to him, stating that he cannot act on it because of some supposed informality in its passage, this is in effect an objection to the bill, and it can only become a law by further action of the Legislative branch, although the Governor may have been mistaken as to the supposed defect in the bill.—Id.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Executive power.

SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be Governor of the State of Nevada.

Governor, election and term of office.

SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Legislature, and shall hold his office for four years from the time of his installation, and until his successor shall be qualified.

Who eligible.

SEC. 3. No person shall be eligible to the office of Governor who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty-five years, and who, except at the first election under the Constitution, shall not have been a citizen resident of this State for two years next preceding the election.

Returns of election, how made.

SEC. 4. The returns of every election for Governor, and other State officers voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the Secretary of State; and on the third Monday of December succeeding such election, the Chief Justice of the Supreme Court, and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State, and open and canvass the election returns for Governor, and all other State officers, and forthwith declare the result and publish the names of the persons elected. The persons having the highest number of votes for the respective offices shall be declared elected; but in case any two or more have an equal and the highest number of votes for the same office, the Legislature shall, by joint vote of both Houses, elect one of said persons to fill said office. Who elected.

SEC. 5. The Governor shall be Commander in Chief of the military forces of this State, except when they shall be called into the service of the United States. Commander-in-Chief.

SEC. 6. He shall transact all executive business with the officers of the Government, civil and military, and may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices. Duties of Governor.

SEC. 7. He shall see that the laws are faithfully executed. Execution of laws.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of the person elected to such office. Vacancies in office, how filled.

SEC. 9. The Governor may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both Houses, when organized, the purpose for which they have been convened; and the Legislature shall transact no legislative business except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session. (1) May convene Legislature

SEC. 10. He shall communicate, by message, to the Legislature, at every regular session, the condition of the State, and recommend such measures as he may deem expedient. Messages to Legislature

SEC. 11. In case of a disagreement between the two Houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature. Power to adjourn Legislature

SEC. 12. No person shall, while holding any office under the United States Government, hold the office of Governor, except as herein expressly provided. Who not eligible to office of Governor.

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(1) The Legislature of this State, when convened in special session, can only legislate on those subjects for which they were specially convened, and such others as may be called to their attention during the session by the Governor.—Jones v. Theall, 3 Nev., p. 233.

The Secretary of State may transmit to the Legislature, in extra session, the bills vetoed by the Governor after the expiration of the regular session; but unless the Governor call attention to these vetoed bills and require action thereon, the Legislature is powerless to act until the next regular session.—Id.

Powers of Governor as to fines, forfeitures, and reprieves.

SEC. 13. The Governor shall have the power to suspend the collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days, dating from the time of conviction, for all offenses, except in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. And if the Legislature should fail or refuse to make final disposition of such case, the sentence shall be enforced at such time and place as the Governor, by his order, may direct. The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon, or commutation granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, and the date of the remission, commutation, pardon, or reprieve.

Who may remit fines and grant pardons.

SEC. 14. The Governor, Justices of the Supreme Court, and Attorney General, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments, and grant pardons, after convictions, in all cases, except treason and impeachments, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

State seal.

SEC. 15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of Nevada."

Grants and commissions to be in name of the State.

SEC. 16. All grants and commissions shall be in the name and by the authority of the State of Nevada, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Lieutenant Governor, how elected

SEC. 17. A Lieutenant Governor shall be elected at the same time and places, and in the same manner as the Governor, and his term of office and his eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the office, or be absent from the State, the President *pro tempore* of the Senate shall act as Governor, until the vacancy be filled or the disability cease.

Acting Governor, when.

SEC. 18. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, and at the head of any military force thereof, he shall continue Commander in Chief of the military forces of the State.

Secretary of State, Controller, Treasurer, and Attorney General, who eligible.

SEC. 19. A Secretary of State, a Treasurer, a Controller, a Surveyor General, and an Attorney General, shall be elected at the same time and places, and in the same manner as the Governor. The term of office of each shall be the same as is prescribed for the Governor. Any elector shall be eligible to either of said offices.

SEC. 20. The Secretary of State shall keep a true record of the official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature. **Duties of Secretary of State.**

SEC. 21. The Governor, Secretary of State, and Attorney General shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a Board of Examiners, with power to examine all claims against the State (except salaries or compensation of officers fixed by law), and perform such other duties as may be prescribed by law. And no claim against the State (except salaries or compensation of officers fixed by law) shall be passed upon by the Legislature without having been considered and acted upon by said "Board of Examiners." **Prison Commissioners.** **Board of Examiners**

SEC. 22. The Secretary of State, State Treasurer, State Controller, Surveyor General, Attorney General, and Superintendent of Public Instruction shall perform such other duties as may be prescribed by law. **Duties.**

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, District Courts, and in Justices of the Peace. The Legislature may also establish Courts for municipal purposes only, in incorporated cities and towns. **Judicial power vested.**

SEC. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, a majority of whom shall constitute a quorum; *provided*, that the Legislature, by a majority of all the members elected to each branch thereof, may provide for the election of two additional Associate Justices, and, if so increased, three shall constitute a quorum. The concurrence of a majority of the whole Court shall be necessary to render a decision. **Supreme Court.** **Quorum.**

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election, and shall hold office for the term of six years from and including the first Monday of January next succeeding their election; *provided*, that there shall be elected, at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from and including the first Monday of December, A. D. eighteen hundred and sixty-four, and continue in office thereafter two, four, and six years, respectively, from and including the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall determine, by lot, the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice; and after the expiration of his term, the one having the next shortest term **Election of Judges.** **Term of office.** **Chief Justice.**

shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice. And in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot who shall be Chief Justice.

Jurisdiction of Court.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law in which is involved the title or right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand (exclusive of interest), or the value of the property in controversy, exceeds three hundred dollars; also, in all other civil cases not included in the general subdivision of law and equity, and also on questiens of law alone, in all criminal cases in which the offense charged amounts to felony. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court in the State, or before any Judge of said Courts. (1)

(1) An order of prohibition may issue from this Court, in a proper case, to arrest the progress of a trial. But such order should not issue when there is other and adequate remedy.—Low v. Crown Point Co., 2 Nev., p. 75.

The office of such writ is not to correct errors, but to prevent Courts transcending the boundaries of their jurisdiction.—Id.

Upon this writ of prohibition we cannot review an interlocutory order made in the Court below. That can only be reviewed on appeal from the final judgment.—Id.

Judicial districts.

SEC. 5. The State is hereby divided into nine Judicial Districts, of which the County of Storey shall constitute the first; the County of Ormsby the second; the County of Lyon the third; the County of Washoe the fourth; the Counties of Nye and Churchill the fifth; the County of Humboldt the sixth; the County of Lander the seventh; the County of Douglas the eighth, and the County of Esmeralda the ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes, until otherwise provided by law. The Legislature may, however, provide by law for an alteration in the boundaries or divisions of the districts herein prescribed, and also for increasing or diminishing the number of the Judicial Districts and Judges therein. But no such change shall take effect except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first general election under this Constitution, there shall be elected in each of the respective districts (except as in this section hereafter otherwise provided), one District Judge, who shall hold office from and including the first Monday of December, A. D. eighteen hundred and sixty-four, and until the first Monday of January, in the year eighteen hundred and sixty-seven; after the said first election, there shall

May be altered.

Election of District Judges.

be elected at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective Judicial Districts (except in the First District, as in this section hereinafter provided). The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years (excepting those elected at the said first election) from and including the first Monday of January next succeeding their election and qualification; *provided*, that the First Judicial District shall be entitled to, and shall have, three District Judges, who shall possess coextensive and concurrent jurisdiction, and who shall be elected at the same times, in the same manner, and shall hold office for the like terms, as herein prescribed in relation to the Judges in other Judicial Districts. Any one of said Judges may preside on the impaneling of Grand Juries, and the presentment and trial on the indictments under such rules and regulations as may be prescribed by law.

One Judge for each district.

SEC. 6. The District Courts in the several Judicial Districts of this State shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or the right of possession to, or the possession of, real property or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest), or the value of the property in controversy, exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and the persons and estates of minors and insane persons, and of the action of forcible entry and unlawful detainer; and also in all criminal cases not otherwise provided for by law. They shall, also, have final appellate jurisdiction in cases arising in Justices' Courts, and such other inferior tribunals as may be established by law. The District Courts, and the Judges thereof, shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction; and also shall have power to issue writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts.

Jurisdiction and powers.

SEC. 7. The times of holding the Supreme Court, and District Courts, shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of government, and the terms of the District Courts shall be held at the county seats of their respective counties; *provided*, that in case any county shall be hereafter divided into two or more districts, the Legislature may, by law, designate the place of holding Courts in such districts.

Terms of Supreme and District Courts, when and where held

SEC. 8. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix, by law, their powers, duties, and responsibilities; *provided*, that such Justices' Courts shall not have jurisdiction of the following cases, viz: First—Of cases in which the matter in dispute is a money demand or personal property, and the amount of the demand (exclusive of interest), or the value of the property, exceeds three hundred dollars. Second—

Justices of the Peace.

Jurisdiction restricted.

Of cases wherein the title to real estate, or mining claims, or questions of boundaries to land, is or may be involved; or of cases that shall in any manner conflict with the jurisdiction of the several Courts of record in this State; *and, provided further,* that Justices' Courts shall have such criminal jurisdiction as may be prescribed by law; and the Legislature may confer upon said Courts jurisdiction, concurrent with the District Courts, of actions to enforce mechanics' liens, wherein the amount (exclusive of interest) does not exceed three hundred dollars; and also of actions for the possession of lands and tenements, where the relation of landlord and tenant exists, or when such possession has been unlawfully or fraudulently obtained or withheld. The Legislature shall also prescribe, by law, the manner, and determine the cases, in which appeals may be taken from Justices' and other Courts. The Supreme Court, the District Courts, and such other Courts as the Legislature shall designate, shall be Courts of record.

Criminal jurisdiction. Concurrent jurisdiction. Appeals. Courts of record.

Municipal Courts. SEC. 9. Provision shall be made, by law, prescribing the powers, duties, and responsibilities of any Municipal Court that may be established in pursuance of section one of this Article; and also fixing, by law, the jurisdiction of said Court, so as not to conflict with that of the several Courts of record.

Judicial officers not to receive fees. SEC. 10. No judicial officer, except Justices of the Peace and City Recorders, shall receive, to his own use, any fees or perquisites of office.

Judges ineligible to other offices during their term. SEC. 11. The Justices of the Supreme Court and the District Judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected; and all elections or appointments of any such Judges, by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

Charge to juries. SEC. 12. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

Style of process. SEC. 13. The style of all process shall be "The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same. (1)

(1) A writ issued against and served on a party, which does not run in the name of "The State of Nevada," or purport to be by the authority of the "State of Nevada," confers no jurisdiction on the Court over the party named in the writ. But if a party on whom such a defective writ has been served comes into Court and petitions for time within which to answer such writ, he thereby acknowledges the authority and jurisdiction of the Court, and waives all defects in the form of the writ.—State ex rel. Curtis v. McCullough, 3 Nev., p. 202.

Form of civil action. SEC. 14. There shall be but one form of civil action, and law and equity may be administered in the same action.

Judges' salaries, how paid. SEC. 15. The Justices of the Supreme Court and District Judges shall each receive, quarterly, for their services, a compensation to be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected, unless in case a vacancy occurs, in which case the successor of the former incumbent shall receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of money to pay such compensation; *provided*, that District Judges shall be paid out of the County Treasuries of the counties composing their respective districts. (1)

(1) In the payment of a debt, legal tender notes are in contemplation of law equal to coin; an Act of the Legislature, therefore, making the salary of a State officer payable in legal tender notes, after it had previously made it payable in coin, is not rendered unconstitutional by that section of the Constitution which declares that the salaries of certain officers shall not be increased or diminished during the term of office.—State ex rel. Beatty v. Rhodes, 3 Nev., p. 240.

This constitutional provision only prohibits the Legislature from increasing or decreasing the number of dollars, in lawful money, at which the salary of an officer is fixed at the time of his election.—Id.

Court fee.

SEC. 16. The Legislature, at its first session, and from time to time thereafter, shall provide, by law, that upon the institution of each civil action and other proceedings, and also upon the perfecting of an appeal in any civil action or proceeding in the several Courts of record in this State, a special Court fee or tax shall be advanced to the Clerks of said Courts, respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such Clerks, and applied towards the payment of the compensation of the Judges of said Courts, as shall be directed by law.

Office, when vacated.

SEC. 17. The Legislature shall have no power to grant leave of absence to a judicial officer, and any such officer who shall absent himself from the State for more than ninety consecutive days, shall be deemed to have vacated his office.

When officers superseded

SEC. 18. No judicial officer shall be superseded, nor shall the organization of the several Courts of the Territory of Nevada be changed, until the election and qualification of the several officers provided for in this Article.

ARTICLE VII.

IMPEACHMENT AND REMOVAL FROM OFFICE.

Impeachment, how tried.

SECTION 1. The Assembly shall have the sole power of impeaching. The concurrence of a majority of all the members elected shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and, when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence. The Chief Justice of the Supreme Court shall preside over the Senate while sitting to try the Governor or Lieutenant Governor upon impeachment. No person shall be convicted without the concurrence of two thirds of the Senators elected.

Chief Justice to preside.

Conviction.

Who liable to impeachment.

SEC. 2. The Governor, and other State and Judicial officers, except Justices of the Peace, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

Justices of Supreme Court and District Judges may be removed.

SEC. 3. For any reasonable cause, to be entered on the Journals of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court and Judges of the District Courts shall be removed from office on the vote of two thirds of the members elected to each branch of the Legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person, or by counsel, in his defense; *provided*, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

Removal from office of civil officer.

SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this Article previously specified, for malfeasance or nonfeasance in the performance of his duties.

ARTICLE VIII.

MUNICIPAL AND OTHER CORPORATIONS.

Special legislation prohibited.

SECTION 1. The Legislature shall pass no special Act in any manner relating to corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

Taxation, what subject to.

SEC. 2. All real property and possessory rights to the same, as well as personal property in this State, belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals; *provided*, that the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.

Dues may be secured.

SEC. 3. Dues from corporations shall be secured by such means as may be prescribed by law; *provided*, that corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporations.

Corporations subject to laws, etc.

SEC. 4. Corporations created by or under the laws of the Territory of Nevada shall be subject to the provisions of such laws until the Legislature shall pass laws regulating the same, in pursuance of the provisions of this Constitution.

Corporations may sue.

SEC. 5. Corporations may sue and be sued in all Courts, in like manner as individuals.

Bank notes prohibited.

SEC. 6. No bank notes or paper of any kind shall ever be permitted to circulate as money in this State, except the Federal currency and the notes of banks authorized under the laws of Congress.

SEC. 7. No right of way shall be appropriated to the use of any corporation until full compensation be first made or secured therefor. Right of way.

SEC. 8. The Legislature shall provide for the organization of cities and towns by general laws, and restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, except for procuring supplies of water. (1) Organization of cities and towns.

> (1) Sec. 8, Art. VIII, of the Constitution, requiring the Legislature to pass a general law for the organization of cities and towns, is inoperative until acted upon by the Legislature.—City of Virginia v. Chollar-Potosi Mining Co., 2 Nev., p. 86.
>
> Such sections, if standing alone, and not qualified by any other section of the Constitution, might raise a strong implied prohibition against the Legislature passing any special laws on the same subject.—Id.
>
> Sec. 1, Art. VIII, by much stronger implication, seems to reserve to the Legislature the power to pass special laws in regard to municipal corporations, that is, to create them, or, at least, to confer special and additional powers after they are in existence.—Id.

SEC. 9. The State shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes. State not to donate or loan.

SEC. 10. No county, city, town, or other municipal corporation shall become a stockholder in any joint stock company, corporation, or association whatever, or loan its credit in aid of any such company, corporation, or association, except railroad corporations, companies, or associations. County, etc., not to become stockholder

ARTICLE IX.

FINANCE AND STATE DEBT.

SECTION 1. The fiscal year shall commence on the first day of January in each year. Fiscal year

SEC. 2. The Legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the State for each fiscal year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing years [year] or two years. Legislature to provide for levying an annual tax.

SEC. 3. For the purpose of enabling the State to transact its business upon a cash basis, from its organization, the State may contract public debts; but such debts shall never, in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars, except for the purpose of defraying extraordinary expenses as hereinafter mentioned. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein; and every such law shall provide State may contract debts. Restriction of debt.

Annual tax. for levying an annual tax sufficient to pay the interest semi-annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds Proceeds, how appropriated. of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of said When contract void. debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or, if hostilities be threatened, provide for the public defense.

State not to assume indebtedness. SEC. 4. The State shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection, or to provide for the public defense.

ARTICLE X.

TAXATION.

Taxation to be equal. SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds of which alone shall be taxed, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

ARTICLE XI.

EDUCATION.

Superintendent, when elected. SECTION 1. The Legislature shall encourage, by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements; and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction, whose term of office Term of office. shall be two years from the first Monday of January, A. D. eighteen hundred and sixty-five, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

School system to be uniform. SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the Public School Fund during such neglect or infraction; and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Lands appropriated for educational purposes.

SEC. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of public schools in the Act of the Thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, approved July second, A. D. eighteen hundred and sixty-two, for each Senator and Representative in Congress; and all proceeds of lands that have been, or may hereafter be granted or appropriated by the United States to this State, and also the five hundred thousand acres of land granted to the new States under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. eighteen hundred and forty-one; *provided*, that Congress make provisions for, or authorizes such diversion to be made for the purpose herein contained, all estates that may escheat to the State, all of such per cent as may be granted by Congress on the sale of land, all fines collected under the penal laws of the State, all property given or bequeathed to the State for educational purposes, and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties; and the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above mentioned sources in United States bonds, or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and, provided further*, that such portion of said interest as may be necessary may be appropriated the support of the State University.

Sale, how made.

Proviso.

University.

SEC. 4. The Legislature shall provide fo~~r the es~~tablishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law.

Normal Schools.

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary, and all professors in said University, or teachers in said schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XV of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section shall be entitled to receive any portion of the public moneys set apart for school purposes.

Special tax.

SEC. 6. The Legislature shall provide a special tax of one half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools; *pro-*

vided, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

Regents. SEC. 7. The Governor, Secretary of State, and Superintendent of Public Instruction shall, for the first four years, and until their successors are elected and qualified, constitute a Board of Regents, to control and manage the affairs of the University and the funds of the same, under such regulations as may be provided by law. But the Legislature shall, at its regular session next preceding the expiration of the term of office of said Board of Regents, provide for the election of a new Board of Regents and define their duties.

Duties of Regents. SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department in such manner as to make it most effective and useful; *provided*, that all the proceeds of the public lands donated by Act of Congress approved July second, A. D. eighteen hundred and sixty-two, for a college for the benefit of agriculture, the mechanic arts, and including military tactics, shall be invested by the said Board of Regents in a separate Fund, to be appropriated exclusively for the benefit of the first named departments to the University, as set forth in section four above; and the Legislature shall provide that if, through neglect or any other contingency, any portion of the Fund so set apart shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said Fund, so that the principal of said Fund shall remain forever undiminished.

Sectarianism prohibited. SEC. 9. No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this Constitution.

ARTICLE XII.

MILITIA.

Organization of militia. SECTION 1. The Legislature shall provide by law for organizing and disciplining the militia of this State, for the effectual encouragement of volunteer corps, and the safe keeping of the public arms.

Power to call out. SEC. 2. The Governor shall have power to call out the militia to execute the laws of the State, or to suppress insurrection or repel invasion.

ARTICLE XIII.

PUBLIC INSTITUTIONS.

Benevolent institutions to be fostered. SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

State Prison. SEC. 2. A State Prison shall be established and maintained in such manner as may be prescribed by law; and provision may be made by law for the establishment and maintenance of a House of Refuge for juvenile offenders.

Aged and infirm, counties to provide for.

SEC. 3. The respective counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age and infirmity, or misfortunes, may have claim upon the sympathy and aid of society.

ARTICLE XIV.

BOUNDARY.

Boundary of State.

SECTION 1. The boundary of the State of Nevada shall be as follows: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a northwesterly direction along said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude and said eastern boundary line of the State of California to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by its intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning. And whensoever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the easterly border of the foregoing defined limits, not exceeding in extent one degree of longitude, the same shall thereupon be embraced within and become a part of this State. *And, furthermore provided*, that all such territory lying west of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this State.

Addition may be added.

ARTICLE XV.

MISCELLANEOUS PROVISIONS.

Seat of Government.

SECTION 1. The seat of government shall be at Carson City, but no appropriation for the erection or purchase of capitol buildings shall be made during the next three years.

SEC. 2. Members of the Legislature, and all officers, executive, judicial, and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

Oath of office.

"I, ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State Convention or Legislature to the contrary notwithstanding; and, further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel during my continuance in office. And further, that I will well and faithfully perform all the duties of the office of ——, on which I am about to enter; (if an oath), so help me God; (if an affirmation), under the pains and penalties of perjury."

Who not eligible.

SEC. 3. No person shall be eligible to any office who is not a qualified elector under this Constitution. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as second or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit, or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide by law for giving force and effect to this section.

Perpetuities.

SEC. 4. No perpetuities shall be allowed except for eleemosynary purposes.

General election.

SEC. 5. The general election shall be held on the Tuesday next after the first Monday of November.

Number of members of Legislature restricted.

SEC. 6. The aggegate number of members of both branches of the Legislature shall never exceed seventy-five.

County offices, where held.

SEC. 7. All county officers shall hold their offices at the county seat of their respective counties.

Publication of laws, etc.

SEC. 8. The Legislature shall provide for the speedy publication of all statute laws of a general nature, and such decisions of the Supreme Court as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; *provided*, that no judgment of the Supreme Court shall take effect and be operative until the opinion of the Court in such case shall be filed with the Clerk of said Court.

Salaries may be increased or diminished.

SEC. 9. The Legislature may at any time provide by law for increasing or diminishing the salaries or compensation of any of the officers whose salary or compensation is fixed in this Constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected.

Officers, how chosen.

SEC. 10. All officers whose election or appointment is not otherwise provided for shall be chosen or appointed as may be prescribed by law.

Tenure of office may be declared

SEC. 11. The tenure of any office not herein provided for may be declared by law, or, when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the Legislature shall not create any office, the tenure of which shall be longer than four years, except as herein otherwise provided in this Constitution.

SEC. 12. The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court shall keep their respective offices at the seat of government. **State offices, where held**

SEC. 13. The enumeration of the inhabitants of this State shall be taken, under the direction of the Legislature, if deemed necessary, in A. D. eighteen hundred and sixty-five, A. D. eighteen hundred and sixty-seven, A. D. eighteen hundred and seventy-five, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in A. D. eighteen hundred and seventy, and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature. **Enumeration of inhabitants**

SEC. 14. A plurality of votes given at an election by the people shall constitute a choice, where not otherwise provided by this Constitution. **Plurality of votes to constitute choice.**

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their respective Journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become a part of the Constitution. **Amendments, how made.**

SEC. 2. If at any time the Legislature, by a vote of two thirds of the members elected to each House, shall determine that it is necessary to cause a revision of this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election shall have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature. In determining what is a majority of the **Revision of Constitution.** **Convention**

Majority of electors. electors voting at such election, reference shall be had to the highest number of votes cast at such election for the candidates for any office or on any question.

ARTICLE XVII.

SCHEDULE.

Rights, etc., to continue. SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada, previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

Laws to remain in force. SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the Legislature.

Fines, etc. to inure to State. SEC. 3. All fines, penalties, and forfeitures accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

Recognizances to remain valid. SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a Territorial to a State Government, shall remain valid, and shall pass to, and may be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer or Court in his or their official capacity, or to the people of the United States in the Territory of Nevada, shall pass to the Governor, or other officer, or Court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on and recovery had accordingly; Bonds may be sued on. and all property, real, personal, or mixed, and all judgments, bonds, specialities, choses in action, claims, and debts of whatsoever description, and all records and public archives of the Territory of Nevada, shall issue to and vest in the State of Nevada, and may be sued for and recovered in the same manner and to the same extent by the State of Nevada, as the same could have been by the Territory of Nevada. Property, records, etc., of Territory to vest in State. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. Criminal prosecutions. All offenses committed against the laws of the Territory of Nevada before the change from a Territorial to a State Government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Nevada with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this Constitution had not been adopted. Offenses committed against laws of Territory. All actions at law and suits in equity and other legal proceedings which may be pending in any of the Courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, Actions, etc., to be continued.

may be continued and transferred to, and determined by any Court of the State which shall have jurisdiction of the subject matter thereof. *All actions at law and suits in equity, and all other legal proceedings, which may be pending in any of the Courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any Court of the State which shall have jurisdiction of the subject matter thereof;* and all books, papers, and records relating to the same shall be transferred in like manner to such Court.

Salaries of officers.

SEC. 5. For the first term of office succeeding the formation of a State Government the salary of the Governor shall be four thousand dollars per annum; the salary of the Secretary of State shall be three thousand six hundred dollars per annum; the salary of the State Controller shall be three thousand six hundred dollars per annum; the salary of the State Treasurer shall be three thousand six hundred dollars per annum; the salary of the Surveyor General shall be one thousand dollars per annum; the salary of the Attorney General shall be two thousand five hundred dollars per annum; the salary of the Superintendent of Public Instruction shall be two thousand dollars per annum; the salary of each Judge of the Supreme Court shall be seven thousand dollars per annum; the salaries of the foregoing officers shall be paid quarterly out of the State Treasury. The pay of State Senators and members of Assembly shall be eight dollars per day for each day of actual service, and forty cents per mile for mileage going to and returning from the place of meeting. No officer mentioned in this section shall receive any fee or perquisites to his own use for the performance of any duty connected with his office, or for the performance of any additional duty imposed upon him by law.

Pay of Senators and Assemblymen.

Officers not to receive perquisites.

Apportionment of Senators and Assemblymen.

SEC. 6. Until otherwise provided by law, the apportionment of Senators and Assemblymen in the different counties shall be as follows, to wit: Storey County, four Senators and twelve Assemblymen; Douglas County, one Senator and two Assemblymen; Esmeralda County, two Senators and four Assemblymen; Humboldt County, two Senators and three Assemblymen; Lander County, two Senators and four Assemblymen; Lyon County, one Senator and three Assemblymen; Lyon and Churchill Counties, one Senator, jointly; Churchill County, one Assemblyman; Nye County, one Senator and one Assemblyman; Ormsby County, two Senators and three Assemblymen; Washoe and Roop Counties, two Senators and three Assemblymen.

Territorial indebtedness assumed.

SEC. 7. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by and become the debt of the State of Nevada; *provided,* that the assumption of such indebtedness shall not prevent the State from contracting the additional indebtedness, as provided in section three of Article IX of this Constitution.

Term of State officers.

SEC. 8. The term of State officers (except judicial) elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until the election and qualification of their successors.

Term of Senators.

SEC. 9. The Senators to be elected at the first election under this Constitution shall draw lots, so that the term of one half of the number, as nearly as may be, shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-six, and the term of the other half shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-eight; *provided*, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted so that in the counties having two or more Senators, the terms thereof shall be divided,. as nearly as may be, between the long and short terms.

Term of Senators fixed.

SEC. 10. At the general election in A. D. eighteen hundred and sixty-six, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years from the day succeeding such general election, and the terms of Senators shall be allotted by the Legislature in long and short terms, as hereinbefore provided, so that one half the number, as nearly as may be, shall be elected every two years.

Term of Assemblymen.

SEC. 11. The term of the members of the Assembly elected at the first general election under this Constitution, shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-five; and the terms of those elected at the general election in A. D. eighteen hundred and sixty-five shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-six.

Sessions of Legislature

SEC. 12. The first regular session of the Legislature shall commence on the second Monday of December, A. D. eighteen hundred and sixty-four, and the second regular session of the same shall commence on the first Monday of January, A. D. eighteen hundred and sixty-six, and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. eighteen hundred and sixty-seven, and the regular sessions of the Legislature shall be held thereafter biennially, commencing on the first Monday of January.

County officers continued in office.

SEC. 13. All county officers under the laws of the Territory of Nevada, at the time when the Constitution shall take effect, whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified; and all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified; *provided*, that the Probate Judges of the several counties respectively shall continue in office until the election and qualification of the District Judges of the several counties or Judicial Districts; *and, provided further*, that the terms of office of the present county officers of Lander County shall expire on the first Monday of January, A. D. eighteen hundred and sixty-five, except the Probate Judge of said county, whose term of office shall expire upon the first Monday of December, A. D. eighteen hundred and sixty-four, and there shall be an election for county

Township officers.

Proviso.

County officers of Lander County.

officers of Lander County at the general election in November, A. D. eighteen hundred and sixty-four, and the officers then elected shall hold office from the first Monday of January, A. D. eighteen hundred and sixty-five, until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified.

Territorial officers continued in office until time for qualification of State officers.

SEC. 14. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada, shall each continue to discharge the duties of their respective offices after the admission of this State into the Union, and until the time designated for the qualification of the above named officers to be elected under the State Government; and the Territorial Auditor shall continue to discharge the duties of his said office until the time appointed for the qualification of the State Controller; *provided*, that the said officers shall each receive the salaries and be subject to the restrictions and conditions provided in this Constitution; *and, provided further*, that none of them shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

Terms of Court determined

SEC. 15. The terms of the Supreme Court shall, until provision be made by law, be held at such times as the Judges of the said Court, or a majority of them, may appoint. The first terms of the several District Courts, (except as hereinafter mentioned,) shall commence on the first Monday of December, A. D. eighteen hundred and sixty-four. The first term of the District Court in the Fifth Judicial District shall commence on the first Monday of December, A. D. eighteen hundred and sixty-four, in the County of Nye, and shall commence on the first Monday of January, A. D. eighteen hundred and sixty-five in the County of Churchill. The terms of the Fourth Judicial District Court shall, until otherwise provided by law, be held at the county seat of Washoe County, and the first term thereof commence on the first Monday of December, A. D. eighteen hundred and sixty-four.

Salaries of District Judges.

SEC. 16. The Judges of the several District Courts of this State shall be paid as hereinbefore provided, salaries at the following rates per annum: First Judicial District, (each Judge,) six thousand dollars; Second Judicial District, four thousand dollars; Third Judicial District, five thousand dollars; Fourth Judicial District, five thousand dollars; Fifth Judicial District, thirty-six hundred dollars; Sixth Judicial District, four thousand dollars; Seventh Judicial District, six thousand dollars; Eighth Judicial District, thirty-six hundred dollars; Ninth Judicial District, five thousand dollars.

Salary of District Judge may be changed.

SEC. 17. The salary of any Judge in said Judicial Districts may, by law, be altered or changed, subject to the provisions contained in this Constitution.

State officers, when to qualify.

SEC. 18. The Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, Attorney General, Surveyor General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution, shall each qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first

Expiration of term.

Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until the election and qualification of their successors respectively.

Judges, when to qualify.

SEC. 19. The Judges of the Supreme Court and District Judges to be elected at the first election under this Constitution shall qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

Officers to be commissioned by the Governor.

SEC. 20. All officers of State, and District Judges first elected under this Constitution, shall be commissioned by the Governor of this Territory, which commission shall be countersigned by the Secretary of the same, and shall qualify, before entering upon the discharge of their duties, before any officer authorized to administer oaths under the laws of this Territory; and also the State Controller and State Treasurer shall each respectively, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory of Nevada an official bond, made payable to the people of the State of Nevada, in the sum of thirty thousand dollars, to be approved by the Governor of the Territory of Nevada; and shall also execute and deliver to the Secretary of State such other or further official bond or bonds as may be required by law.

Controller and Treasurer to execute bond.

Support of county, town, city, and village officers.

SEC. 21. Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such regulations as may be prescribed by law.

Vacancy in office of Justice of Supreme Court, District Judge, or other State officer, how filled.

SEC. 22. In case the office of any Justice of the Supreme Court, District Judge, or other State officer shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

Cases in Probate Courts to be transferred to District Courts.

SEC. 23. All cases, both civil and criminal, which may be pending and undetermined in the Probate Courts of the several counties at the time when, under the provisions of this Constitution, said Probate Courts are to be abolished, shall be transferred to and determined by the District Courts of such counties respectively.

Taxation restricted.

SEC. 24. For the first three years after the adoption of this Constitution the Legislature shall not levy a tax for State purposes exceeding one per cent per annum on the taxable property of the State; *provided*, the Legislature may levy a special tax, not exceeding one fourth of one per cent per annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada assumed by the State of Nevada, and for that purpose only, until all of said indebtedness is paid.

(1) The twenty-fourth section of Art. XVII of the Constitution prohibits taxation beyond one and one quarter per cent for State purposes during the first three years of its existence.—State ex rel. Nightingill v. Com. Storey Co., 1 Nev., p. 244.

The third section of Art. IX discussed and commented on. It does not qualify the twenty-fourth section of the seventeenth Article.—Id.

SEC. 25. The County of Roop shall be attached to the County of Washoe for judicial, legislative, revenue, and county purposes, until otherwise provided by law.

Roop and Washoe Counties.

SEC. 26. At the first regular session of the Legislature to convene under the requirements of this Constitution provision shall be made by law for paying for the publication of six hundred copies of the debates and proceedings of this Convention, in book form, to be disposed of as the Legislature may direct; and the Hon. J. Neely Johnson, President of this Convention, shall contract for, and A. J. Marsh, Official Reporter of this Convention, under the direction of the President, shall supervise the publication of such debates and proceedings. Provision shall be made by law at such first session of the Legislature for the compensation of the Official Reporter of this Convention, and he shall be paid in coin or its equivalent. He shall receive, for his services in reporting the debates and proceedings, fifteen dollars per day during the session of the Convention, and seven and one half dollars additional for each evening session, and thirty cents per folio of one hundred words for preparing the same for publication; and for supervising and indexing such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

Provision for publication of debates, etc.

Payment of official reporter.

Compensation.

ELECTION ORDINANCE.

WHEREAS, The Enabling Act passed by Congress, and approved March twenty-first, A. D. eighteen hundred and sixty-four, requires that the Convention charged with the duty of framing a Constitution for a State Government, "shall provide by ordinance for submitting said Constitution to the people of the Territory of Nevada, for their ratification or rejection," on a certain day prescribed therein; therefore, this Convention, organized in pursuance of said Enabling Act, do establish the following

Election ordinance.

ORDINANCE:

SECTION 1. The Governor of the Territory of Nevada is hereby authorized to issue his proclamation for the submission of this Constitution to the people of said Territory, for their approval or rejection, on the day provided for such submission by Act of Congress; and this Constitution shall be submitted to the qualified electors of said Territory, in the several counties thereof, for their approval or rejection, at the time provided by such Act of Congress; and further, on the first Tuesday after the first Monday of November, A. D. eighteen hundred and sixty-four, there shall be a general election in the several counties of said Territory for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors.

Governor to issue proclamation for submission of Constitution.

SEC. 2. All persons, qualified by the laws of said Territory to vote for Representatives to the General Assembly, on the said twenty-first day of March, including those in the Army of

Qualified voters.

the United States, both within and beyond the boundaries of said Territory, and also all persons who may, by the aforesaid laws, be qualified to vote on the first Wednesday of September, A. D. eighteen hundred and sixty-four, including those in the aforesaid Army of the United States, within and without the boundaries of said Territory, may vote for the adoption or rejection of said Constitution, on the day last above named. In voting upon this Constitution, each elector shall deposit in the ballot box a ticket, whereon shall be clearly written or printed, "Constitution—Yes," or "Constitution—No;" or such other words that shall clearly indicate the intention of the elector.

What officers may be voted for.

SEC. 3. All persons qualified by the laws of said Territory to vote on the Tuesday after the first Monday of November, A. D. eighteen hundred and sixty-four, including those in the Army of the United States, within and beyond the boundaries of said Territory, may vote on the day last above named, for State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors to the Electoral College.

How election to be conducted.

SEC. 4. The elections provided in this ordinance shall be holden at such places as shall be designated by the Boards of Commissioners of the several counties in said Territory. The Judges and Inspectors of said elections shall be appointed by said Commissioners, and the said elections shall be conducted in conformity with the existing laws of said Territory in relation to holding the general election.

Returns, how made.

SEC. 5. The Judges and Inspectors of said elections shall carefully count each ballot immediately after such elections, and forthwith make duplicate returns thereof to the Clerks of the said County Commissioners of their respective counties; and said Clerks, within fifteen days after said elections, shall transmit an abstract of the votes, including the soldiers' vote, as herein provided, given for State officers, Supreme and District Judges, Representative in Congress, and three Presidential Electors, inclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked "Election Returns."

Board of Canvassers.

SEC. 6. Upon the receipt of said returns, including those of the soldiers' vote, or within twenty days after the election, if said returns be not sooner received, it shall be the duty of the Board of Canvassers, to consist of the Governor, United States District Attorney, and Chief Justice of said Territory, or any two of them, to canvass the returns in the presence of all who may wish to be present; and if a majority of all the votes given upon this Constitution shall be in its favor, the said Governor shall immediately publish an abstract of the same, and make proclamation of the fact, in some newspaper in said Territory, and certify the same to the President of the United States, together with a copy of the Constitution and Ordinance. The said Board of Canvassers, after canvassing the votes of the said November elections, shall issue certificates of election to such persons as were elected State officers, Judges of the Supreme and District Courts, Representative in Congress, and three Presidential Electors. When the President of the United

Governor to publish abstract of vote, and issue proclamation.

States shall issue his proclamation declaring this State admitted into the Union on an equal footing with the original States, this Constitution shall thenceforth be ordained and established as the Constitution of the State of Nevada.

Constitution established

SEC. 7. For the purpose of taking the vote of the electors of said Territory who may be in the army of the United States, the Adjutant General of said Territory shall, on or before the fifth day of August next following, make out a list, in alphabetical order, and deliver the same to the Governor, of the names of all the electors, residents of said Territory, who shall be in the Army of the United States, stating the number of the regiment, battalion, squadron, or battery, to which he belongs, and also the county or township of his residence in said Territory.

Votes of soldiers, how taken.

SEC. 8. The Governor shall classify and arrange the aforesaid returned list, and shall make therefrom separate lists of the electors belonging to each regiment, battalion, squadron, and battery from said Territory, in the service of the United States, and shall, on or before the fifteenth day of August following, transmit, by mail or otherwise, to the commanding officer of each regiment, battalion, squadron, and battery, a list of electors belonging thereto, which said list shall specify the name, residence, and rank of each elector, and the company to which he belongs, if to any, and also the county and township to which he belongs, and in which he is entitled to vote.

Governor to classify return lists.

SEC. 9. Between the hours of nine o'clock A. M. and three o'clock P. M., on each of the election days hereinbefore named, a ballot box, or suitable receptacle for votes, shall be opened, under the immediate charge and direction of three of the highest officers in command, for the reception of votes from the electors whose names are upon said list, at each place where a regiment, battalion, squadron, or battery of soldiers from said Territory, in the Army of the United States, may be on that day; at which time and place said elector shall be entitled to vote for all officers for which, by reason of their residence in the several counties in said Territory, they are authorized to vote, as fully as they would be entitled to vote in the several counties or townships in which they reside, and the votes so given by such electors, at such time and place, shall be considered, taken and held to have been given by them in the respective counties and townships in which they are resident.

Time of holding election.

Under whose direction.

SEC. 10. Each ballot deposited for the adoption or rejection of this Constitution, in the Army of the United States, shall have distinctly written or printed thereon "Constitution, Yes," or "Constitution, No," or words of a similar import; and, further, for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors, the name and office of the person voted for shall be plainly written or printed on one piece of paper. The name of each elector voting, as aforesaid, shall be checked upon the said list, at the time of voting, by one of the said officers having charge of the ballot box. The said officers having charge of the election shall count the votes and compare them with the checked list immediately after the closing of the ballot box.

Ballot, what to contain.

Officers' duty.

Returns, when and where to be made.

SEC. 11. All the ballots cast, together with the said voting list, checked as aforesaid, shall be immediately sealed up and sent forthwith to the Governor of said Territory, at Carson City, by mail or otherwise, by the commanding officer, who shall make out and certify duplicate returns of votes given, according to the forms hereinafter prescribed, seal up and immediately transmit the same to the said Governor, at Carson City, by mail or otherwise, the day following the transmission of the ballots and the voting list herein named. The said commanding officer shall also immediately transmit to the several County Clerks in said Territory, an abstract of the votes given at the general election in November, for county officers, marked "Election Returns."

Form of returns.

SEC. 12. The form of returns of votes to be made by the commanding officer to the Governor and County Clerks of said Territory shall be in substance as follows, viz:

"Returns of soldiers' votes in the (here insert the regiment, detachment, battalion, squadron, or battery.)

(For first election—on the Constitution.)

I, ———, hereby certify, that on the first Wednesday of September, A. D. eighteen hundred and sixty-four, the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron, or battery) cast the following number of votes for and against the Constitution for the State of Nevada, viz:

For Constitution—(number of votes written in full and in figures.)

Against Constitution—(number of votes written in full and in figures.)

(Second election—for State and other officers.)

I, ———, hereby certify, that on the first Tuesday after the first Monday in November, A. D. eighteen hundred and sixty-four, the electors belonging to the (here insert as above) cast the following number of votes for the several officers and persons hereinafter named, viz:

For Governor—(names of persons voted for, number of votes for each person voted for, written in full, and also in figures, against the name of each person.)

For Lieutenant Governor—(names of candidates, number of votes cast for each written out, and in figures, as above.)

Continue as above till the list is completed.

Attest: I. A. B.,

Commanding officer of the (here insert regiment, detachment, battalion, squadron, or battery, as the case may be.)

Blank returns to be furnished.

SEC. 13. The Governor of this Territory is requested to furnish each commanding officer, within and beyond the boundaries of said Territory, proper and sufficient blanks for said returns.

Provisions to apply to future elections.

SEC. 14. The provisions of this Ordinance in regard to the soldiers' vote shall apply to future elections under this Constitution, and be in full force until the Legislature shall provide by law for taking the votes of citizens of said Territory in the Army of the United States.

Done in Convention, at Carson City, the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth, and signed by the Delegates.

J. NEELY JOHNSON,
President of the Convention and Delegate from Ormsby County.

WM. M. GILLESPIE, Secretary.

Delegates to Convention.

Henry B. Brady	Delegate from Washoe County.
E. F. Dunne	Delegate from Humboldt County.
J. G. McClinton	Delegate from Esmeralda County.
G. N. Folsom	Delegate from Washoe County.
F. H. Kennedy	Delegate from Lyon County.
W. W. Belden	Delegate from Washoe County.
F. M. Proctor	Delegate from Nye County.
Albert T. Hawley	Delegate from Douglas County.
Geo. L. Gibson	Delegate from Ormsby County.
F. Tagliabue	Delegate from Nye County.
Wm. Wetherill	Delegate from Esmeralda County.
Jno. A. Collins	Delegate from Storey County.
Jas. A. Banks	Delegate from Humboldt County.
J. S. Crosman	Delegate from Lyon County.
Sam'l A. Chapin	Delegate from Storey County.
C. M. Brosnan	Delegate from Storey County.
John H. Kinkead	Delegate from Ormsby County.
Geo. A. Hudson	Delegate from Lyon County.
Israel Crawford	Delegate from Ormsby County.
A. J. Lockwood	Delegate from Ormsby County.
H. G. Parker	Delegate from Lyon County.
J. H. Warwick	Delegate from Landor County.
C. E. DeLong	Delegate from Storey County.
Lloyd Frizell	Delegate from Storey County.
Geo. A. Nourse	Delegate from Washoe County.
B. S. Mason	Delegate from Esmeralda County.
Almon Hovey	Delegate from Storey County.
Thomas Fitch	Delegate from Storey County.
J. W. Haines	Delegate from Douglas County.

THE COMPILED LAWS

OF THE

STATE OF NEVADA.

THE

COMPILED LAWS

OF THE

STATE OF NEVADA.

CHAPTER I.

OF THE COMMON LAW.

SECTION 1. Application of the common law.

An Act adopting the common law.

[Approved October 30, 1861, p. 1.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

1. SECTION 1. The common law of England, so far as it is not repugnant to, or inconsistent with the Constitution or laws of the United States, or the laws of the Territory of Nevada, shall be the rule of decision in all Courts of this Territory. (1) **Application of the common law.**

(1) The common law of England, as adopted in this country, is usually to be taken as modified by English statutes passed prior to the declaration of American independence.—Hamilton vs. Kneeland, 1 Nev., p. 40.

Remedies in derogation of, must be strictly followed.—Steel vs. Steel, 1 Nev., p. 27.

Whatever is a crime under the common law is punishable under our statutes.—State vs. Sales, 2 Nev., p. 268.

An attempt to commit a crime is itself a crime at common law.—Id.

CHAPTER II.

OF LAWS AND JOINT RESOLUTIONS.

SECTION 2. When laws and joint resolutions shall take effect.

An Act fixing the time when laws and joint resolutions shall take effect.

[Approved January 10, 1865, p. 90.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

When laws and joint resolutions shall take effect.

2. SECTION 1. Every law and joint resolution hereafter passed by the Legislature of the State of Nevada shall take effect and be in force from and after its passage, unless such law or joint resolution shall prescribe a different time.

CHAPTER III.

OF THE OBSERVANCE OF THE LORD'S DAY.

SECTION 3. Places to be closed.
4. Certain judicial business tolerated.
5. Penalty for violation.
6. Jurisdiction.
7. Fines, how disposed of.

An Act for the better observance of the Lord's day.

[Approved November 21, 1861, p. 39.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Places to be closed.

3. SECTION 1. No person shall keep open any play-house or theater, race-ground, cock-pit, or play at any game of chance for gain, or engage in any noisy amusement, on the first day of the week, commonly called Lord's day.

Certain judicial business tolerated.

4. SEC. 2. No judicial business shall be transacted by any Court, except deliberations of a jury who have received a case on a week day, so called, and who may receive further instruc-

tions from the Court, at their request, or deliver their verdict; nor any civil process be served by any certifying or attesting officer, nor any record made by any legally appointed or elected officer, upon the first day of the week, commonly called the Lord's day; *provided*, that criminal process may issue for the apprehension of any person charged with crime, and criminal examination to be proceeded with.

5. SEC. 3. Any person or persons violating the provisions of the two preceding sections of this Act, shall be punished, on conviction thereof, by a fine of not less than thirty dollars, nor more than two hundred and fifty dollars, for each offense. Penalty for violation.

6. SEC. 4. Justices of the Peace may have jurisdiction of all complaints arising under the aforesaid Act. Jurisdiction.

7. SEC. 5. On complaint of any person, before a Justice of the Peace, the person or persons found guilty of any offenses specified in this Act, shall be fined as aforesaid, to be paid to the Treasurer of the Territory, for the benefit of common schools; and the offender shall, in addition to the said fine and the costs of prosecution, give bonds, with two good and sufficient sureties, in the sum of not less than two hundred dollars, nor more than five hundred dollars, for good behavior during any time within the discretion of the Court, and stand committed till the whole order is complied with, and the fine be paid. Fines, how disposed of.

CHAPTER IV.

OF LEGAL HOLIDAYS.

SECTION 8. Holidays designated; grace allowed except on sight bills.

An Act to designate the holidays to be observed in the acceptance and payment of bills of exchange and promissory notes.

[Approved October 30, 1861, p. 1.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

8. SECTION 1. The following days, namely: the first day of January, Washington's birthday, or the twenty-second day of February, the fourth day of July, thanksgiving day on the proclamation of the Governor, the twenty-fifth day of December, commonly called Christmas day, ([a]) shall for all purposes whatsoever as regards the presenting for payment, or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, checks, and promissory notes, made after the passage of this Act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace, shall be allowed, except on sight Holidays designated. Grace allowed, except on sight bills.

bills or drafts; and any one of the holidays specified in this Act coming within the three days of grace shall be counted as one of such days.

(a) Courts shall not be open, etc. See Sec. 955, post. Writs of habeas corpus may issue on, Sec. 383.

CHAPTER V.

OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

SECTION 9. When negotiable.
10. Signed by agent, valid.
11. "Persons," how construed.
12. Action by payee and indorsee.
13. Notes payable to fictitious persons valid.
14. Acceptance to be in writing.
15. On separate paper.
16. Promise to accept.
17. Refusal to accept.
18. Damages for not accepting.
19. Constructive acceptance.
20. Damages on protested bills.
21. Interest on amount of protested bills.
22. Rates of exchange.
23. Rate of exchange in foreign currency.
24. Damages on protest for non-acceptance.
25. Damages, by whom recovered.
26. Notice of dishonor, how given.
27. Not to apply.

FALLING DUE ON SUNDAY OR LEGAL HOLIDAY.

28. Negotiable instruments falling due on Sunday or legal holiday.

An Act relative to bills of exchange and promissory notes.

[Approved October 31, 1861, p. 4.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

When negotiable. 9. SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or to his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

Signed by agent, valid.

10. Sec. 2. Every such note, signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect and be negotiable, as above provided.

"Persons," how construed.

11. Sec. 3. The word "person," in the last two preceding sections, shall be construed to extend to every corporation capable by law of making contracts.

Action by payee and indorsee.

12. Sec. 4. The payees and indorsees of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned against the makers and indorsees of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Notes payable to fictitious persons valid.

13. Sec. 5. Such notes, made payable to the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to the bearer.

Acceptance to be in writing.

14. Sec. 6. No person within this Territory shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

On separate paper.

15. Sec. 7. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

Promise to accept.

16. Sec. 8. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of any person who, upon the faith thereof, shall have received the bill for a valuable consideration.

Refusal to accept.

17. Sec. 9. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill: a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

Damages for not accepting.

18. Sec. 10. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

Constructive acceptance.

19. Sec. 11. Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same.

Damages on protested bills.

20. Sec. 12. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this Territory, shall be as follows: 1. If such bill shall have been drawn upon any person or persons, in any of the United States east of the Rocky Mountains, fifteen dollars upon the hundred upon the principal sum specified in such bill. 2. If such bill shall have been drawn upon any person or persons in any port or place in Europe, or in any

foreign country, twenty dollars upon the hundred upon the principal sum specified in such bill.

Interest on amount of protested bills.

21. SEC. 13. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given and payment of such principal sum shall have been demanded.

Rates of exchange.

22. SEC. 14. If the contents of such bill be expressed in money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined without any reference to the rate of exchange existing between this Territory and the place on which such bill shall have been drawn at the time of the demand of payment, or of notice of non-payment.

Rate of exchange in foreign currency.

23. SEC. 15. If the contents of such bill be expressed in the money of account, or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency at the time of the demand of payment.

Damages on protest for non-acceptance.

24. SEC. 16. When a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance as provided in the last four sections, and shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

Damages, by whom recovered.

25. SEC. 17. The damages allowed by this Act shall be recovered only by the holder of the bill, who shall have purchased the same, or some interest therein, for a valuable consideration.

Notice of dishonor, how given.

26. SEC. 18. In all cases where a notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument, may be given, by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resided at the time of drawing, making, or indorsing such bill of exchange, promissory note, or other negotiable instrument, unless such person, at the time of affixing his signature to such bill, note, or other negotiable instrument, shall, in addition thereto, specify thereon the Post Office to which he may require the notice to be addressed.

Not to apply.

27. SEC. 19. Nothing in this Act shall apply to bills of exchange, promissory notes, or other negotiable instruments, made or drawn before this Act takes effect.

NOTES.—If A. borrows fifteen hundred dollars in gold from B. when that gold would be worth twenty-five hundred dollars in Government paper currency, and gives his note for twenty-five hundred dollars, the note is a valid note with sufficient consideration. There is neither a want of consideration nor a failure of consideration.—Cox vs. Smith et al., 1 Nev., 161.

PROMISSORY NOTE, EXISTENCE OF PARTIES.—There must be two parties to every promissory note; a maker and a payee. If the payee named is not *in esse*, there is no note.—Wayman vs. Torreyson, 4 Nev., 124.

NOTE PAYABLE TO FICTITIOUS PAYEE.—The doctrine of Foster vs. Shattuck, 2 New Hampshire, 448, that a note made to a fictitious payee or order, may be sued on by the person to whom delivered, as if made payable to bearer, is not borne out by authority nor correct in principle.—Id.

There can be no strict indorsement of a negotiable promissory note, except by the payee or indorsee.—Vandoran vs. Tjader, Winters et al., 1 Nev., p. 380.

The contract of guaranty to be effectual must be in writing, and must express *the* consideration upon which it is based. Where, therefore, a stranger to a promissory note indorses it in blank at the time of its execution, though he be a guarantor of the note, yet he cannot be holden upon it where there is no such contract in writing expressing the consideration for his undertaking.—Id.

A guarantor of a promissory note will not be discharged by the failure of the holder to demand payment and give strict notice of non-payment. Reasonable notice of the dishonor of the note is all that he is entitled to.—Id.

A contract of guaranty, though made at the time of the principal contract and upon the same consideration, must, nevertheless, be in writing, signed by the party to be charged, and must express the consideration which sustains it.—Id.

When there is anything on the face of a note or bill of exchange showing that the party signing is acting for another, and not himself, parol testimony may be introduced to bind the principal.—Gillig, Mott & Co. vs. Lake Bigler Road Co., 2 Nev., p. 214.

A bill of acceptance in the following words indicates that J. E. Garrett was acting as agent for the Lake Bigler Road Company, and not for himself, in the acceptance:

LAKE BIGLER ROAD COMPANY,
CARSON, January 15th, 1864.

[$2,000.] Four months after date, pay to the order of Messrs. Gillig, Mott & Co. two thousand dollars, with interest at two and one half per cent per month till paid—value received—and charge the same to the account of

BUTLER IVES, Sup't.

To J. E. GARRET,
Secretary, Carson.

The mere writing the word "agent" after the signature to a note or bill will not bind the principal; but if the name of the principal appears on the face of the instrument, then the word "agent" following the signature may, in connection with other things in the instrument, indicate that the principal only is bound.—Id.

The word "Superintendent," or "Secretary," written after a signature has the same effect as the word "agent."—Id.

Although the written authority to the Secretary did not authorize him to accept bills, yet the fact that he had frequently accepted bills in favor of plaintiff, which were paid by defendant without complaint, was sufficient to bind defendant on other acceptances.—Id.

Where a note is made by A. to B., and by B. indorsed to C., B. is a regular indorser and entitled to all rights, and only subject to the liabilities of an indorser, although it may have been agreed in advance of the execution of the note that A. was to make, and B. to indorse the note for the benefit of C.—Heintzelman vs. L'Amoroux, 3 Nev., p. 377.

PROMISSORY NOTES OF VIRGINIA CITY.—The City of Virginia, by its Mayor and Board of Aldermen, having taken a lease of certain rooms for the accommodation of its Common Council, at a rental of two hundred dollars per month, and having agreed in the lease if the rent were not paid as it fell due, to execute its promissory notes therefor, bearing interest at five per cent per month; and its notes having been accordingly executed in regular form; and it being admitted that it had the power to take a lease: *held*, that it had the power to execute the notes as a means of carrying out the power of taking a lease.—Douglas vs. Mayor and Aldermen Virginia City, 5 Nev., p. 247.

SPECIFIC CONTRACT—GOLD COIN OR ITS EQUIVALENT.—Where a promissory note was made payable "in gold coin or its equivalent in United States legal tender notes:" *held*, that a judgment on it simply and solely for gold coin was erroneous; that the judgment should have followed the contract, and fixed the amount to be paid, if paid in gold, and the amount to be paid, if paid in legal tender notes.—Wells, Fargo & Co. vs. Van Sickle, 6 Nev., p. 45.

VALUES IN GOLD OR LEGAL TENDER NOTES.—Where parties make a contract payable in gold coin, or its equivalent in legal tender notes, and do not agree upon a place of payment or a standard by which the relative values of the two currencies can be measured, the place and time of trial will be the market where the values should be estimated.—Id.

"SPECIFIC CONTRACT LAW."—Where a contract is made payable "in gold coin or its equivalent in United States legal tender notes," it does not require a Specific Contract Act (so called) to empower a Court to enforce it according to its terms.—Id.

JUDGMENT FOR GOLD COIN OR ITS EQUIVALENT.—A judgment on a promissory note payable in gold coin or its equivalent in United States legal tender notes, should be in the alternative, and provide that if default be made in the payment of gold coin, then, as compensation therefor, an amount in legal tender notes, equal in value at the time and place of trial to such gold coin, should be paid.—Id.

An Act in relation to bills of exchange and other negotiable instruments.

[Approved December 19, 1862, p. 80.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Negotiable instruments falling due on Sunday, or legal holiday.

28. SECTION 1. All bills of exchange, checks, promissory notes, or other negotiable instruments, which, by the terms thereof, are payable with or without grace, if the day for the payment thereof shall fall on any Sunday, or on any of the holidays designated in that certain Act entitled an Act to designate the holidays to be observed in the acceptance and payment of bills of exchange and promissory notes, approved October thirtieth, eighteen hundred and sixty-one, the same shall become due and payable on the day previous to any of the days aforesaid. (a)

(a) For the legal holidays, see Sec. 8, ante; days of grace allowed, Sec. 8, ante.

CHAPTER VI.

OF MONEY OF ACCOUNT AND INTEREST.

SECTION 29. Computation of.
30. Accounts not vitiated.
31. Judgments, how computed.
32. Rates of interest.
33. Parties may agree for.

An Act in relation to money of account and interest.

[Approved November 28, 1861, p. 99.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Computation of.

29. SECTION 1. The money of account of this Territory shall be the dollar, cent, and mill; and all accounts in the public offices, and other public accounts, and all proceedings in Courts, shall be kept and had in conformity to this regulation.

Accounts not vitiated

30. SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument, expressed in any other money of account, but the same shall be reduced to dollars, or parts of dollars, as hereinbefore directed, in any suit thereupon.

Judgments, how computed.

31. SEC. 3. In all judgments and decrees, rendered by any Court of justice, for any debt, damages, or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment, or other proceedings, shall be considered erroneous for such omission.

Rates of interest.

32. SEC. 4. When there is no express contract, in writing, fixing a different rate of interest, interest shall be allowed at the rate of ten per cent per annum, for all moneys after they become due on any bond, bill, or promissory note, or other instrument of writing, on any judgment recovered before any Court in this Territory, for money lent, for money due on the settlement of accounts, from the day on which the balance is ascertained, and from money received to the use of another.

Parties may agree for.

33. SEC. 5. Parties may agree, in writing, for the payment of any rate of interest whatever on money due, or to become due, on any contract. Any judgment rendered on such contract, shall conform thereto, and shall bear the interest agreed upon by the parties, and which shall be specified in the judgment; *provided*, only the amount of the original claim or demand shall draw interest after judgment.

(1) INTEREST NOT ALLOWED ON AN OPEN ACCOUNT.—The statute concerning interest (Statutes of 1861, p. 100, Sec. 4), does not allow interest on money due on an open account; and a judgment allowing such interest, where there is no special agreement, is so far erroneous.—Flannery v. Anderson, 4 Nev., p. 437.

When a party borrows money and agrees to pay a certain rate of interest until due, the contract is broken when the day of payment is passed and the note remains unpaid. After breach, in the absence of a continuing contract as to interest, the statute fixes the damages to be recovered.—McLane vs. Abrams, 2 Nev., p. 199.

By our statute, the rate of interest (or damage for detention) after breach is the same as that fixed by the contract before breach.—Id.

The statute gives damages at the rate of ten per cent per annum for the withholding of money generally. But for withholding of money which bears a higher rate of interest by contract, a corresponding damage for withholding is allowed.—Id.

And that higher interest is allowed, although the contract itself does not provide for such higher rate after maturity of the debt.—Id.

Interest exceeding ten per cent per annum cannot be recovered unless the promise to pay it be in writing.—Williams et al. vs. Glasgow, 1 Nev., p. 533.

It is a settled rule in Courts of equity that a contract for future compound interest will not be enforced. The rule in Courts of law is not so well settled in regard to such contracts.—Cox v. Smith et al., 1 Nev., p. 161.

Our statute does not sanction compound interest. Contracts, therefore, in regard to compound interest, must stand or fall by the established rules of equity and common law Courts. It is held in this State that contracts for compound interest cannot be enforced.—Id.

When a note is made payable at a given day, with interest at the rate of six per cent per month until paid, it continues to draw six per cent interest after maturity and after judgment.—Id.

INTEREST ON MONEY BORROWED BY EXECUTORS NOT ALLOWED.—An executor or administrator has no authority to borrow money for the use of the estate represented by him, nor will interest on money borrowed for the estate be allowed.—Estate of Millenovich, No. 2, 5 Nev., p. 189.

INTEREST ON CONTROLLERS' WARRANTS.—If, as is now decided, warrants issued under the Legislative Fund Act of 1869, create no debt against the State within the meaning of the constitutional restriction (Const., Art. IX, Sec. 3), the addition of an interest clause to such warrants cannot make them unconstitutional.—Ash v. Parkinson, 5 Nev., p. 15.

INTEREST, WHAT.—Interest constitutes no part of the original demand; it is simply a statutory allowance for delay.—Id.

CHAPTER VII.

OF ESTABLISHING FINANCIAL TRANSACTIONS OF THE STATE ON COIN BASIS.

SECTION 34. Salaries, etc., to be paid in coin.
35. Taxes to be levied and paid in coin.
36. Treasurers required to convert currency into coin.
37. Act not to affect claims prior to June first, eighteen hundred and sixty-nine.
38. Currency to be procured.
39. When debt to be discharged in currency.
40. Not to apply to payment for lands.

An Act to establish the financial transactions of the State upon a coin basis.

[Approved February 2, 1869, p. 51.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Salaries, etc., to be paid in coin.

34. SECTION 1. From and after the first day of January, A. D. eighteen hundred and sixty-nine, all salaries, fines, fees,

imposts, and dues, of whatsoever description, whether State, county, township, or municipal, shall be payable in United States gold and silver coin.

Taxes to be levied and paid in coin.

35. SEC. 2. All taxes which may hereafter be levied, whether State, county, or municipal, shall be levied, assessed, and collected in United States gold and silver coin.

Treasurers required to convert currency into coin.

36. SEC. 3. The State Treasurer, by and with the advice and consent of the Board of Examiners; and the Treasurers of the several counties, by and with the advice and consent of the Board of County Commissioners; and the Treasurers of municipalities, by and with the advice and consent of the Board of Aldermen, or Board of Trustees, within the State, are hereby authorized and required to convert the legal tender paper currency, not required for the payment of claims, as provided in section four of this Act, which now is, or hereafter shall be, paid into any Fund in either respective Treasuries, into the United States gold and silver coin.

Act not to affect claims prior to June 1st, 1869.

37. SEC. 4. Nothing contained in this Act shall be construed as to affect any claim against the State, or any county, township, or municipality, contracted prior to the first day of January, A. D. eighteen hundred and sixty-nine; but all such claims shall be paid in the legal tender paper currency of the United States.

DIFFERENCE BETWEEN COIN AND PAPER CURRENCY.—There is a difference of value between gold coin and legal tender paper currency; it is recognized by the general government, and should be recognized by Legislatures and Courts; and as such difference exists in fact, it cannot be wrong to take notice of and be governed by such fact.—The State of Nevada v. Kruttschnitt, 4 Nev., p. 178.

DISTINCTION BETWEEN COIN AND CURRENCY FOR TAXATION PURPOSES—The action of the Legislature in making a distinction between gold coin and legal tender paper currency for the purposes of valuation of property for taxation, and directing Assessors as to the currency on which to base their estimates of value, is not in violation of the laws of the United States.—Id.

STANDARD OF CURRENCY VALUE.—The true standard of the difference between coin and legal tender paper currency, for the purposes of the valuation of the products of mines for quarterly taxation, is the average of the prices of currency for the preceding quarter.—Id.

CONGRESS HAS NOT PROHIBITED SPECIFIC CONTRACT LAWS.—There is nothing in the laws of Congress prohibiting the enforcement of contracts for the payment of coin in accordance with their strict letter by judgments for the kind of money agreed to be paid.—Linn, Appellant, v. Minor, Respondent, 4 Nev., p. 462.

SPECIFIC CONTRACT LAWS.—It is a matter of indifference to the United States Government whether individual debts be paid in one currency or another; nor does the legislation of Congress make it the duty of any person to employ notes in preference to gold; nor is it in contravention of public policy or contrary to good morals to allow a person to waive his privilege of paying his debts in legal tender notes.—Id.

THE DOCTRINE OF STARE DECISIS.—A decision once made upon due deliberation ought not to be disturbed by the same Court, except upon the most cogent reasons and undoubted manifestations of error; but if it be clearly incorrect, and no injurious results will be likely to flow from a reversal, and especially if it be injurious and unjust in its operation, it should be reversed.—Id.

Milliken v. Sloat, 1 Nev. p. 585, as to specific contract law, being in conflict with the legal tender law of Congress, overruled.—Id.

Milliken v. Sloat, beyond its operation in enabling dishonest debtors to defraud their creditors, has been a dead letter ever since its rendition, and virtually overruled by the moral power of the upright portion of the community.—Id.

An Act supplementary to an Act entitled "An Act to establish the financial transactions of the State on a coin basis," approved February second, eighteen hundred and sixty-nine, and making provisions by which County Commissioners and municipalities may be enabled to carry out the provisions thereof.

[Approved February 26, 1869, p. 85.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Currency to be procured.

38. SECTION 1. Whenever any county, township, or city shall be under obligations to pay any debt in the legal tender paper currency of the United States, and shall not have in their respective Treasuries legal tender paper currency of the United States to pay the same, or shall not have sufficient for such purpose, it shall be lawful, and is hereby made the duty of such county, township, or city, by and through its proper officers, out of any money belonging thereto, not otherwise specially appropriated or set apart, to procure a sufficient amount of the currency specified in this section to pay such obligation or liability; *provided*, if the owner and holder of any such debt or obligation will offer in writing to receive in full satisfaction and payment thereof a sum in gold coin which will be equal to the market value in such gold coin, of the legal tender paper currency of the United States (such valuation to be determined by said county or municipal authorities) which he would be entitled to receive, it shall be lawful for such county, township, or city, by and through its proper officers, to accept the surrender of such obligation, and pay in gold coin a sum that will be in full satisfaction thereof, upon the terms herein provided.

When debt to be discharged in currency

39. SEC. 2. Whenever since the first day of January, A. D. eighteen hundred and sixty-nine, any county, township, or city government shall have contracted or incurred any debt, expense,

or obligation on a basis of value reckoned in the legal tender paper currency of the United States, and not on a gold coin basis, the same shall be paid and discharged in such legal tender paper currency, and the funds necessary to so pay and discharge the same may be obtained, or the same satisfied and paid in manner as provided in section one of this Act.

Not to apply to payment for lands.

40. SEC. 3. Nothing in this Act or the Act to which this Act is supplementary, shall be so construed as to apply to the payment for any lands heretofore or that may hereafter be purchased of the State; but all such lands may be paid for in the legal tender paper currency of the United States.

CHAPTER VIII.

OF FORCIBLE ENTRIES AND UNLAWFUL DETAINERS, AND PUNISHMENT FOR CONTEMPTS AND TRESPASSES.

SECTION 41. How entry may be made.
42. Possession restored.
43. Unlawful detention.
44. Same.
45. Demand for rent may be made at any time.
46. Landlord to give notice when terms of lease are changed.
47. Fraud may be charged.
48. When defendant deemed guilty of fraud.
49. Order of arrest.
50. Plaintiff to show possession.
51. Occupants to be defendants.
52. When the verdict is for plaintiff.
53. Proceedings on the trial.

CONTEMPTS AND TRESPASSES.

54. Contempt of Court in certain cases.
55. Alias process to be issued.

An Act concerning forcible entries and unlawful detainers.

[Approved February 16, 1865, p. 160.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

How entry may be made.

41. SECTION 1. No entry shall be made into any lands, tenements, or other possessions, but in cases where entry is given by law; and in such case, only in a peaceable manner, not with strong hand, nor with multitude of people.

42. SEC. 2. When any such forcible entry shall be made, or where the entry shall be made in a peaceable manner, and the possession shall be held by force against the person entitled to the possession, the person so forcibly put out, or so forcibly holden out of possession, shall be restored to such possession by action, to be commenced and prosecuted as in this Act provided. **Possession restored.**

43. SEC. 3. It shall be unlawful for any person to hold over any lands, tenements, or other possessions, after the termination of the time for which they may have been demised or let to him, or her, or to the person under whom he or she holds possession; or contrary to the covenants of the lease or agreement under which he or she holds; or the lease or agreement of the person under whom he or she holds possession; or after any rent shall have become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days after the same shall have become due, as aforesaid. **Unlawful detention.**

44. SEC. 4. In all cases specified in the preceding section, and in all other cases where a person, not a tenant under the landlord by virtue of any lease or agreement, or where any person not holding possession as the tenant or sub-tenant of such landlord, may be found in possession of the premises, the landlord may, at any time within one year after such rent shall become due and remain unpaid, or after any holding over contrary to the terms of such lease, make demand, in writing, of such tenant or tenants, or of such person in possession of the premises, that he, she, or they, deliver the possession of the premises held as aforesaid; and if such tenant or tenants, or such person in possession of the premises, shall refuse or neglect, for the space of three days after such demand, to quit the possession of such lands or tenements, in case the term has expired, or the covenants or conditions of the lease require said premises to be surrendered, or to pay the rent, in case the term has not expired, but rent remains unpaid, then such tenant or tenants, or person in possession of the premises, shall be deemed guilty of an unlawful detainer. **Same.**

45. SEC. 5. It shall not be necessary, in order to work a forfeiture for the non-payment of rent, to make demand for rent on the day on which the same becomes due, or at any particular time of day, but demand may be made of the tenant in person, or of any person in possession of the premises at any time within a year after such rent shall become due, and may be made for the whole amount due and unpaid at the date of making such demand. The failure on the part of the lessee, or his assigns, or the person in possession, to pay such rent upon such demand being made, shall have the same force and effect as if such demand had been made on the premises toward sunset on the day when the rent became due. **Demand for rent may be made at any time.**

46. SEC. 6. In all leases of lands or tenements, or any interest therein, from month to month, the landlord may, and it shall be lawful for him, upon giving notice, in writing, at least fifteen days before the expiration of the month, to change the terms of the lease, to take effect at the expiration of said month. Said notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part **Landlord to give notice when terms of lease are changed.**

of the lease, the terms, rent, and conditions specified in said notice, if such tenant shall continue to hold such premises after the expiration of said month. In all leases of lands or tenements, or any interest therein, for a month, or any term less than a year, if the tenant holds over his term by consent of his landlord, the tenancy shall be construed to be a tenancy from month to month, or a tenancy for such term, less than a year, as the case may be; *provided*, that a tenancy from month to month may be terminated by the landlord giving notice of such termination ten days prior to the expiration of the month.

Fraud may be charged.

47. SEC. 7. The complaint, in actions commenced or prosecuted under this Act, shall set forth the facts on which the plaintiff seeks to recover, and shall describe the premises sought to be recovered, with reasonable certainty, and may charge that the defendant has acted fraudulently in making such forcible entry, or holding such forcible possession (in case where the action is brought for a forcible entry, or forcible holding), and may claim such damages thereof as he may deem proper; and in case of rent due and unpaid, may state the amount thereof; and such complaint shall be verified in the mode prescribed by law for the verification of pleadings in civil cases.

When defendant deemed guilty of fraud.

48. SEC. 8. A defendant shall be deemed to be guilty of fraud, within the meaning of this Act, when the forcible entry or the forcible detainer are shown to have been made or done in bad faith, and knowing that the said defendant had no legal right to make such entry or detainer.

Order of arrest.

49. SEC. 9. Upon presenting the complaint in said action, duly verified as aforesaid, and charging fraud in making such forcible entry, or in holding such possession by force, to the Judge of the Court in which such action is brought, an order for the arrest of the defendant or defendants shall be made by such Judge; and all the provisions of law from section seventy-six to section ninety-eight, both inclusive, in title five, chapter one, of an Act entitled "An Act to regulate proceedings in civil cases in the Courts of justice of the Territory of Nevada," approved November twenty-ninth, eighteen hundred and sixty-one, shall be, and are hereby made the rule of proceeding to said arrest and bail in said action of forcible entry or forcible detainer. (a)

Plaintiff to show possession.

50. SEC. 10. On the trial of any action of forcible entry, or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show, in his defense, that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of said action, and that his interest therein is not then ended or determined, and such showing shall be a bar to the action in all cases provided for in this Act.

Occupants to be defendants.

51. SEC. 11. No person other than the actual occupants of the premises shall be necessary parties defendant to proceedings under this Act; and in case a married woman be a tenant or occupant, and her husband be a non-resident, or cannot be personally served with the summons within the county within which the premises are situated, before the return day of such summons, her marriage shall not be a defense in such proceedings, but in case her husband be not found and served with summons, a judgment against her shall only be valid against property on the premises at the time of the commencement of the action.

52. SEC. 12. If, upon the trial of any action under the provisions of this Act, the verdict of the jury, or the finding of the Court, shall be in favor of the plaintiff, the Court shall thereupon enter judgment for the plaintiff to have restitution of the premises, and the jury or the Court (in case the action is tried without a jury) shall also find or assess the damages occasioned to the plaintiff by such forcible entry or forcible detainer, or holding over or not surrendering the demised premises, or, in case of rent unpaid, the amount of rent then due, and thereupon shall at once enter judgment against the defendant; if the same be for damages, for rent due and unpaid, for the amount of such damages; or if the same be for damages for a forcible entry or forcible holding, then for three times the amount of such damages so found or assessed. **When the verdict is for plaintiff**

53. SEC. 13. The proceedings in or upon the trial of any such action, shall be the same as in other civil cases, except as herein otherwise provided, and judgment shall be entered, execution issued, and all other proceedings, both before and subsequent to judgment, be had as in other civil cases. **Proceedings on the trial.**

(a) For Secs. 76 to 98, of the Act of 1861, see corresponding sections of the Civil Practice Act of 1869, Secs. 1137 to 1159, post, both inclusive.

Judgment upon confession cannot be entered in a Justice's Court in an action for forcible entry and unlawful detainer. Per Brosnan, J.—Paul v. Armstrong, 1 Nev., p. 82.

The Constitution confers jurisdiction on the District Courts to hear and determine actions of forcible entry and detainer without any special legislative enactment on the subject.—Hoopes v. Meyer, 1 Nev., p. 433.

The offense is described by a statute still in existence. The proof to be made, the manner of proceeding on the trial, etc., are all prescribed either by the Forcible Entry Act or the General Practice Act.—Id.

The Act in regard to forcible entries, etc., prescribes what judgment a Justice may enter. The jurisdiction being transferred to another Court, that Court may enter the same judgment.—Id.

An Act for the punishment of contempts and trespasses.

[Approved March 11, 1865, p. 398.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Contempt of Court in certain cases.

54. SECTION 1. Every person who shall have been, or shall be hereafter, dispossessed or ejected from or out of any piece, parcel, lot, or tract of land, by the judgment, decree, or process of any Court of competent jurisdiction, and who, not having legal right so to do, shall reënter into, or upon, or take possession of any such land, or any part thereof, or induce or procure any person not having legal right so to do, or shall aid or abet him therein, shall be deemed guilty of a contempt of the Court by which said judgment or decree was rendered, or from which such process issued, and shall be tried and punished therefor, in the same manner and form as now provided by law in case of contempt not committed in presence of the Court or Justice of the Peace.

Alias process to be issued.

55. SEC. 2. Upon a conviction for such contempt, the Court or Justice of the Peace shall immediately issue an alias process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such property under the original judgment, decree, or process, to such possession, of which he shall have been dispossessed by the wrongful conduct or act herein declared to be a contempt.

CHAPTER IX.

OF THE UNLAWFUL HOLDING OVER OF LANDS AND TENEMENTS.

SECTION 56. Holding over of lands, tenements, etc., and trial by Justices of the Peace.
57. Demand.
58. Parties defendant.
59. Change of terms of lease; notice; leases from month to month.
60. Premises held adversely.
61. Jurisdiction of Justice of the Peace.
62. Complaint and summons.
63. Service of summons.
64. Service on absent defendant.
65. Trial by Justice or jury.
66. Adjournment of trial.
67. Same.
68. Testimony.

SECTION 69. Judgment and costs.
70. Damages.
71. Jurors and witnesses failing to appear, etc.
72. Appeal.
73. Stay of proceedings.
74. Possession of premises.
75. Want of form.
76. Form of summons.
77. Writ of restitution.

An Act concerning unlawful holding over of lands, tenements, and other possessions.

[Approved March 8, 1865, p. 263.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

56. SECTION 1. When any person or persons shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to him, her, or them, or to the person or persons under whom he, she, or they hold, or after any rent shall become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days after demand for payment thereof, in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant or tenants, or any person in possession of the premises, that he, she, or they shall deliver the possession of the premises held as aforesaid; and if such tenant or tenants, or person or persons in possession of the premises, shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements, or to pay the rent due and unpaid as aforesaid, upon complaint therefor to any Justice of the Peace of the proper county, the Justice shall proceed to hear, try, and determine the same in the manner in this Act provided. (1) Holding over of lands, tenements, etc., and trial by Justices of the Peace.

57. SEC. 2. It shall not be necessary, in order to work a forfeiture for non-payment of rent, to make a demand thereof on the day on which the same becomes due, or at any particular time of the day, but demand may be made of the tenant in person, or of any person in possession, at any time within a year after such rent shall become due, according to the terms of any lease or agreement, and may be made for the whole amount due and unpaid at the time of such demand; and the failure on the part of the lessee or his assigns, to pay such rent upon such demand being made, shall have the same force and effect as if demand had been made on the premises toward sunset on the day when the rent became due. Demand.

58. SEC. 3. No person, other than the actual occupants of the premises, shall be necessary parties defendant to proceedings under this Act; and in case a married woman be a tenant or occupant, and her husband cannot be personally served with the summons within the county in which the premises are situ- Parties defendant.

ated before the return day of such summons, her marriage shall not be a defense in such proceedings; but in case her husband be not joined and served, a judgment against her shall only be valid against property on the premises at the time of the trial.

Change of terms of lease. Notice. 59. SEC. 4. In all leases of lands or tenements, or any interest therein, from month to month, the landlord may, and it shall be lawful for him, upon giving notice in writing, at least fifteen days before the expiration of the month, to change the terms of the lease, to take effect at the expiration of said month; said notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in said notice, if such tenant shall continue to hold such premises after the expiration of the month. Leases from month to month. In all leases of lands or tenements, or any interest therein, for a month, or any less term than one year, and the tenant holds over his term by consent of his landlord, the tenancy shall be construed to be a tenancy from month to month, or a tenancy for such term less than a year, as the case may be.

Premises held adversely. 60. SEC. 5. The remedy provided for in this Act shall not apply as against any person who shall have held the premises demised, leased, or let to him, or to the person under or through whom he holds the possession for one year, adversely to the right, title, or claim of the landlord, or to the person under or through whom he claims.

Jurisdiction of Justice of the Peace. 61. SEC. 6. Any Justice of the Peace of the proper county shall have jurisdiction of all actions commenced and prosecuted, as in this Act provided.

Complaint and summons. 62. SEC. 7. When any complaint shall be made in writing, under oath, to any Justice of the Peace, of any such unlawful holding over, said Justice shall issue a summons, directed to the Sheriff, or any Constable of the county, commanding him to summon the person or persons complained of, to appear before said Justice, on a day in such summons named, which shall not be less than three, nor more than six days, from the day of issuing such summons, and at the place therein mentioned.

Service of summons. 63. SEC. 8. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a true copy thereof to such person or persons, at least two days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving such summons.

Service on absent defendant. 64. SEC. 9. If at the time of making such complaint it shall be made to appear that the person or persons, against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the Justice to issue his summons, as hereinbefore provided, and the same may be served by leaving a true copy thereof, at the last or usual place of abode of such person or persons, not less than two days from the return day thereof; which copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same; and the officer shall make a special return of the time and manner of serving said summons;

and the suit shall thereafter proceed the same as though a personal service were had of such summons.

65. SEC. 10. After the return of the summons, served as hereinbefore provided, and at the time and place appointed in said summons, the Justice shall proceed to hear and determine said complaint, unless either party shall demand a jury, in which case the Justice shall issue a venire for a jury, in the same manner, and upon the same terms, as in other cases provided for trial by jury in Justices' Courts; and such jury shall be sworn as in other cases. Trial by Justice or jury.

66. SEC. 11. The Justice may, at his discretion, and for good cause shown, adjourn the trial of any cause under this Act, not exceeding five days; and when the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for want of some material witness, naming him, stating the evidence that he expects to obtain, showing that he has used due diligence to obtain such witness, and believes that if an adjournment be allowed he will be able to procure the attendance of such witness, or his deposition, in time to produce the same upon the trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said Justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding thirty days. Adjournment of trial.

67. SEC. 12. If the complainant admit that the evidence stated in the affidavit mentioned in the last preceding section would be given by such witness, and agree that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be adjourned. Same.

68. SEC. 13. The testimony of any witness which may be considered necessary by either party, may be taken in the same manner, and with the like effect, as is provided for the taking of testimony in other cases in Justices' Courts. Testimony.

69. SEC. 14. If, upon the trial of any complaint under this Act, the Justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations in the complaint, said Justice shall immediately enter judgment for the complainant to have restitution of the premises, and shall tax the costs for the complainant, and shall issue execution therefor; but if the said Justice or jury find that the person complained of is not guilty, the Justice shall tax the costs against the complainant, and issue execution therefor. If the jury impaneled cannot agree upon a verdict, the Justice shall discharge them, and issue a new venire, returnable forthwith, or at some time agreed upon between the parties; and in case the jury fail to agree, each party shall pay one half of the jury fee, which shall abide the final determination of the suit. Judgment and costs.

70. SEC. 15. In all cases of a verdict by the Justice or jury for the complainant, the damages shall be assessed, if claimed in the complaint, as well for waste and injury committed upon the premises, as for the rents and profits during such unlawful holding over, and the verdict shall also find the monthly value of the rents and profits of the said premises; and the complainant Damages.

shall be entitled to recover treble damages against the person or persons against whom judgment has been rendered, which damages shall be assessed by the Justice or jury, and entered as a judgment in the cause upon which execution shall issue.

Jurors and witnesses failing to appear, etc.

71. SEC. 16. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or appearing, shall refuse to serve or give evidence in any cause instituted under this Act, shall forfeit and pay a fine for every such default or refusal, to the use of the county, unless some reasonable cause be assigned; such fine, not exceeding twenty dollars, as the Justice shall think proper to impose, and execution shall issue therefor.

Appeal.

72. SEC. 17. If either party shall feel aggrieved by the verdict of the jury, or the decision of the Justice, he may appeal within ten days, as in other cases tried before Justices of the Peace, and he shall give bonds, with two or more sufficient sureties, to be approved by said Justice, in all respects as appeals are perfected in other cases before Justices of the Peace, conditioned to pay all costs of such appeal, and abide the order the appellate Court may make therein, and pay all rent and other damages justly accruing during the pending of such appeal; and upon the filing of the notice of appeal, and the affidavit of the appellant, that the appeal is taken in good faith, and that he intends to perfect said appeal, the Justice shall grant a stay of the writ of restitution, for not exceeding two days, for the purpose of allowing the appellant an opportunity to file his appeal bond, and for no other. ([a])

Stay of proceedings.

73. SEC. 18. Upon taking such appeal, all further proceedings in the cause shall be thereby stayed, and the appellate Court, in all cases which are now pending, or which may hereafter be brought, shall proceed to try the case anew, and shall issue all necessary writs and process to carry out the provisions of this Act.

Possession of premises

74. SEC. 19. If a writ of restitution shall have been issued previous to the taking of the appeal, the Justice shall give the appellant a certificate of the allowance of such appeal; and upon the serving of such certificate upon the officer having such writ of restitution, said officer shall cease all further proceedings, by virtue of such writ; and if such writ shall not have been completely executed, the parties in possession shall remain in possession of the premises until the appeal shall be determined.

Want of form.

75. SEC. 20. In all cases of appeal under this Act, the appellate Court shall not dismiss or quash the proceedings for want of form; *provided*, the proceedings have been conducted substantially according to the provisions of this Act; and amendments to the complaint, answer, or summons, in matters of form only, may be allowed by the Court, at any time before final judgment, upon such terms as may be just; and all matters of excuse, justification, or avoidance of the allegations in the complaint, may be given in evidence under the answer.

Form of summons.

76. SEC. 21. The following or equivalent forms may be used in proceedings under this Act, to wit: *Summons:* The State of Nevada to the Sheriff or any Constable of the County of ——, greeting: Whereas, A. B., of the County of ——, hath exhibited unto me, a Justice of the Peace for said county, a complaint against C. D., of the County of ——, for that the

said C. D., of the County of ———, on the ——— day of ———, A. D. ———, at the County of ———, (here insert the substance of the complaint with sufficient certainty.) You are therefore commanded to summon the said C. D., if he be found in your county, to be and appear before me, at my office (stating the place), on the ——— day of ———, A. D. ———, then and there to make answer unto the complaint aforesaid. Given under my hand this ——— day ———, A. D. ———. E. F., Justice of the Peace.

Writ of restitution.

77. SEC. 22. *Writ of Restitution:* The State of Nevada to the Sheriff or Constable of the County of ———, greeting: Whereas, A. B., of the County of ———, at a Court of inquiry of an unlawful holding over of lands, tenements, and other possessions, held at my office (stating the place), in the county aforesaid, on the ——— day of ———, A. D. ———, before me, a Justice of the Peace for the county aforesaid, by the consideration of the Court has recovered judgment against C. D., to have restitution of (here describe the premises as in the complaint.) You are therefore commanded, that taking with you the force of the county, if necessary, you cause the said C. D. to be immediately removed from the aforesaid premises, and the said A. B. to have peaceable restitution of the same; and you are also commanded that of the goods and chattels of the said C. D., within said county, you cause to be made the sum of ——— dollars for the said plaintiff, together with the costs of suit indorsed hereon, and make return hereof within thirty days from this date. Given under my hand this ——— day of ———, A. D. ———. E. F., Justice of the Peace.

(a) For Appeals, see Civil Practice Act, Sec. 1642.

(1) A demand of possession must be made by the landlord before bringing suit against his tenant for holding over. Such demand is indispensable, and is as necessary to be made before suit, as that the relation of landlord and tenant should exist.—Paul v. Armstrong, 1 Nev., p. 82.

ENTRY UNDER VOID LEASE—TENANCY AT WILL.—The rule that a tenancy at will is created where a tenant enters upon property under a void lease, and, as such tenant at will, is entitled to notice to quit, does not apply to a case of entry under a lease made by a pretended agent, acting entirely without authority from the owners.—The Yellow Jacket S. M. Co. v. Stevenson, 5 Nev., p. 224.

The repeal of the Act takes away the right to impose a fine for its violation, but does not deprive parties of their rights acquired by contract under the law whilst it was in existence.—Hoopes v. Meyers, 1 Nev., p. 433.

A denial that a demand was made on a certain day as alleged, is a denial that the demand was made on the particular day stated in the complaint, when the statement of the demand is not qualified as to the manner of its being made.—Id.

Our statute does not require a demand for rent to be made on the premises at a late hour of the day the same falls due, in order to produce a forfeiture of the premises rented.—Id.

If the material facts stated in the complaint are denied in the answer, or if other facts are stated in avoidance, it is not necessary to deny mere conclusions of law.—Id.

The instruction that "the title of tenant in common is not paramount to that of his cotenant," was calculated to mislead and was therefor erroneous.—Id.

The expression that a tenant can only excuse himself from paying rent when evicted by paramount title, means that he can only excuse himself when he is kept out of possession by one who has a legal right to do so, and not a mere trespasser against whom he has his remedy.—Id.

If a party hold a lease from one of two tenants in common for certain premises, and the other tenants in common afterwards take possession of a part of the common property, the lessee has no remedy against him, and will be entitled to an abatement *pro tanto* in his rent.—Id.

Evidence tending to show the defendant was kept out of possession of part of the leased premises by a tenant in common of the lessor or his agent, should have been admitted.—Id.

When rent is fixed at a certain rate for a definite period, an agreement, without consideration, to reduce the rent during that period, is void.—Id.

Our statute seems to contemplate that treble damages, to some extent, should be rendered against a delinquent tenant for holding over, but it fails totally to define or point out what shall be trebled. Whether it shall be treble damages for the time during which the defendant may have held over unlawfully after rent demand, treble the amount of the last installment of rent which may have fallen due, or treble the amount of all past installments of rent which may have not been paid, in the absence of all law showing what shall be trebled: *Held*, that there can be no treble damages.—Id.

The defendant is entitled to a credit as against his landlord's demand equal to the total value of that part of the premises of which he was deprived by the cotenant of his lessor.—Id.

ENTERING AND HOLDING UNDER LEASE NOT SIGNED BY TENANT.—If a person obtain possession and occupy premises under lease (though not signed by him), he should be holden to accept subject to all the covenants and obligations of the instrument.—Fitton v. Hamilton City, 6 Nev., 196.

ACTION FOR RENT ON LEASE NOT SIGNED BY TENANT.—Where a tenant holds premises under a lease not signed by him, although a technical action of covenant might not be supported, an action in the nature of assumpsit for rent can certainly be maintained.—Id.

LEASE NOT SIGNED BY TENANT AS EVIDENCE AGAINST HIM.—In an action for rent against a tenant, who holds under a lease signed only by the lessor, such lease is admissible in evidence to show the conditions and reservations under which the possession is held.—Id.

EFFECT OF HOLDING UNDER LEASE NOT SIGNED BY TENANT.—Where a tenant took and held possession of premises under a lease not signed by him: *Held*, that his acceptance of possession was equivalent to an execution of the instrument.—Id.

ENTERING UNDER LEASE WRONGLY DESCRIBING LESSEE—ESTOPPEL.—Where the City of Hamilton entered upon and held certain premises under a lease purporting to run to the "Trustees of Hamilton City," but signed only by the lessor: *Held*, that the corporation was estopped from taking advantage of the fact that it was not correctly named in the lease.—Id.

LEASE—TERM CREATED BY HOLDING OVER.—Where a tenant under a lease for three months held over after the expiration of the term with the consent of the landlord: *Held*, that a new term of three months was created, and that it was no answer to the landlord's claim for rent for such new term, that the tenant did not occupy the premises for the whole of it.—Id.

STATUTE RELATING TO TENANTS HOLDING OVER.—Where a tenant under a lease for a term less than a year holds over with the consent of his landlord, a new tenancy for a like term is created by virtue of the statute. (Stats. 1864-5, p. 264.)—Id.

CHAPTER X.

OF POSSESSORY ACTIONS.

SECTION 78. Occupants of public lands may defend possession; working mines not precluded.
79. Extent of claim; metes and bounds; to be occupied.
80. Claims to be recorded.
81. Land to be improved.
82. Occupant may absent himself; appropriation of money.
83. Proceedings in actions.
84. What lands deemed public; right of possession; what deemed unlawful entry.
85. Acts repealed.

An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State.

[Approved March 9, 1865, p. 343.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Occupants of public lands may defend possession.

78. SECTION 1. Any person now legally occupying and settled upon, or who may hereafter occupy or settle upon, any of

Working mines not precluded.

the public lands in this State, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with, or injuries done to, his or her possession of said land, against any person or persons so interfering with or injuring such land or possession; *provided*, that if the lands so occupied and possessed contain mines of any of the precious metals, the possession or claim of the person or persons occupying the same, for the purposes aforesaid, shall not preclude the working of such mines by any person or persons desiring so to do, as fully and unreservedly as they might or could do had no possession or claim been made for grazing or agricultural purposes. (1)

Extent of claim. Metes and bounds. To be occupied.

79. SEC. 2. Every such claim, to entitle the holder to maintain any action as aforesaid, shall not contain more than one hundred and sixty acres, and the same shall be surveyed and marked by metes and bounds, so that the boundaries may be readily traced and the extent of such claim easily known; and no person shall be entitled to maintain any such action for possession of, or injury to, any claim, unless he or she occupy the same, and shall have complied with the provisions of the third and fourth sections of this Act.

Claims to be recorded.

80. SEC. 3. Any person claiming any of the public lands in this State shall have the same surveyed by the County Surveyor of the county in which said lands are situated, and shall have the plot of such survey duly certified to by said Surveyor, recorded in the office of the County Recorder, and shall take and subscribe his or her affidavit that he or she has taken no other claim under this Act, and that, to the best of his or her knowledge and belief, the said lands are not claimed under any existing title.

Land to be improved.

81. SEC. 4. Within ninety days after the date of said record, the party recording is hereby required to improve the lands thus recorded to the value of two hundred dollars, by putting such improvements thereon as shall partake of the realty, unless such improvements shall have been made prior to the application for survey and record, according to section third of this Act.

Occupant may absent himself. Appropriation of money.

82. SEC. 5. At any time after the provisions of the second, third, and fourth sections of this Act shall have been complied with, the party so complying shall be permitted to absent himself or herself from such claim, without being required to occupy the same, for a period of not more than twelve months; *provided*, the person so wishing to absent himself or herself shall first pay to the Treasurer of the county in which said claim shall be situated the sum of fifteen dollars, in gold or silver coin, upon which payment the Treasurer shall issue a receipt for the same. At any time within twelve months after the date thereof, such receipt shall be received as prima facie evidence of possession in any Court having jurisdiction in such cases. Any person absenting himself or herself from said claim for a longer period than sixty days, without first paying the sum provided in this section, shall forever forfeit his or her claim to the lands. One half of the amount paid to any County Treasurer, under the provisions of this section, shall be paid by said Treasurer into the General Fund of such county, and the balance into the

State Treasury, whenever making his regular settlements with the State Treasurer. The State Treasurer shall set apart and retain all moneys received from such source as a special fund, which may hereafter be appropriated by law for the maintenance and protection of the insane.

83. SEC. 6. On the trial of any such causes, the possession or possessory right of the plaintiff, shall be considered as extending to the boundaries embraced in such survey, so as to enable him or her, according to section third of this Act, to have and maintain any action as aforesaid, without being compelled to prove an actual inclosure. **Proceedings in actions.**

84. SEC. 7. All lands in this State shall be deemed and regarded as public lands, until the legal title is known to have passed from the Government to private individuals or parties. **What lands deemed public.** Every person who shall have complied with the provisions of this Act shall be deemed and held to have the right or title of possession of all the lands embraced within their survey, not to exceed one hundred and sixty acres; **Right of possession.** and any person who shall thereafter, without the consent of the person so complying, enter into or upon said lands adversely, shall be deemed and held guilty of an unlawful and fraudulent entry thereon, and may be removed therefrom by proceedings had before any Justice of the Peace of the township in which the lands are situated (or in case of the absence or other disability of such Justice, before any other Justice of an adjoining township). **What deemed unlawful entry.** Such proceedings may be commenced and prosecuted under the provisions of an Act of the Legislature of the State of Nevada, entitled "An Act concerning forcible entries and unlawful detainers," approved February sixteenth, eighteen hundred and sixty-five; and all the provisions contained in said Act are made applicable to proceedings under this Act. [As amended February 20th, Stats. 1869, p. 72.]

85. SEC. 8. Sections ten and thirteen of an Act passed by the Legislative Assembly of the Territory of Nevada, entitled "An Act to regulate surveys and surveying," approved November twenty-ninth, one thousand eight hundred and sixty-one, and all other Acts or parts of Acts, so far as the same are inconsistent with, or repugnant to, the provisions of this Act, are hereby repealed. **Acts repealed.**

(1) What acts are sufficient to constitute such a possession of public land as will maintain ejectment, must, in a great measure, depend upon the character of the land, the locality, and the object for which it is taken up.—Sankey v. Noyes, 1 Nev., p. 68.

Possession is prima facie evidence of title, and sufficient to maintain ejectment; but when possession alone is relied on, it must be an actual bona fide occupation.—Id.

The mere staking off of land, without occupation or other acts of ownership, would not constitute such a possession as would maintain ejectment.—Id.

Until there is some decisive act to show an ouster or adverse possession, the possession of one joint tenant, or tenant in common, inures to the benefit of all cotenants.—Van Valkinburg v. Huff, 1 Nev., p. 142.

Prior possession of land by the plaintiff, and ouster by defendant, makes a prima facie case for plaintiff, and throws the burden of proof on defendant to show that he has some superior right.—McFarland v. Culbertson, 2 Nev., p. 280.

It is not sufficient for defendants to show the land is subject to preëmption. They must show all the facts which establish their rights as preëmptors.—Id.

The plaintiff having shown his right as an occupant, the defendants, to have protected their possession, should have shown the land subject to preëmption, and themselves of that class of persons entitled to preëmption rights.—Id.

A certificate of the Register of the Land Office that defendants had filed a declaratory statement in his office, did not prove that they were of the class of persons entitled to preempt. If the declaratory statement might be received as evidence on that point, at least that statement, or a certified copy thereof, should have been introduced.—Id.

An occupation of timber land within boundaries clearly marked and defined, constitutes possession, without any actual inclosure of such lands by fence.—Id.

The law only requires such possession to be taken as will make the land available and useful to the occupier. Arable and meadow lands must be inclosed to be valuable for any useful purpose. Timber land need only to be marked out to show within what boundaries the occupant claims.—Id.

PRIOR POSSESSION—QUESTION OF FACT.—In ejectment for land, on the ground of prior possession, if there is some evidence tending to prove acts of appropriate domain, its sufficiency is a question of fact for the jury, and not one of law, for the Court to decide.—Sharon vs. Davidson, 4 Nev., 416.

INSUFFICIENCY OF EVIDENCE—NONSUIT.—In ejectment based on prior possession, it is error to grant a nonsuit on the ground of insufficiency of the evidence to show prior possession, where there is some evidence tending to show such prior possession.—Id.

ACTUAL POSSESSION OF LAND—WHAT.—The possession of public land necessary to be shown to enable a claimant relying solely upon prior possession to recover in ejectment, must be an actual occupation—a complete subjugation to the will and control, *a pedis possessio*. The mere assertion of title, the casual or occasional doing of some acts on the land, or the bare marking of boundaries, have never been held sufficient after the lapse of a sufficient time to make such inclosures or improvements as may be necessary to give actual possession.—Robinson vs. Imperial Mining Company, 5 Nev., 44.

LOCATION AND POSSESSION OF LAND FOR MILL SITE AND WATER RIGHT.—Black & Eastman, in December, eighteen hundred and fifty-nine, posted a notice on a tree on the bank of Carson River, of the location by them of a water right, commencing at that point, and of a right of way for a ditch, of a certain capacity, to a rocky bend of the river below, and within the next six months did some fifteen or twenty days work on the ditch, but not sufficient to make it of any practical use; and they also erected a monument of stones at a point suitable for a mill site on the river below the rocky bend; after which nothing further was done until October, eighteen hundred and sixty-one, when DeGroot entered: *Held*, not sufficient acts on the part of Black & Eastman to give them actual possession of the land traversed by the ditch, or of the mill site, nor to prevent DeGroot's entry and appropriation of them.—Id.

DIFFERENCE BETWEEN APPROPRIATIONS OF LAND AND WATER.—Public land is appropriated by one character of act, water by another. The digging of a ditch on public land is not an appropriation of land sufficient for a mill site, nor is the mere appropriation of a mill site an appropriation of water for milling purposes.—Id.

TOWN SITE APPROPRIATIONS.—A private survey for a town site was made of a tract of land, including certain premises claimed by other parties, and not as a part of the town site, which premises were not subdivided into lots like the balance of the tract, nor plotted on the map thereof, nor were they fenced or improved: *Held*, that the owners of the town site, though they might possess and own the lots subdivided, staked out, and plotted by them without fencing or other improvement, they could not be held to have appropriated the premises not so subdivided; and had no possession of them.—Id.

FORCIBLE INTERRUPTION OF SETTLEMENT OF PUBLIC LAND.—DeGroot, having entered upon certain public land under the Utah statute of eighteen hundred and fifty-two (Utah Stats. 1852, p. 175), and caused it to be surveyed, was engaged in fencing it, when he was forcibly driven off: *Held*, that, by a compliance with the law so far as he could or was permitted, he acquired a title which entitled him to the possession of the land, as against all persons except the Government.—Id.

POSSESSORY TITLE TO PUBLIC LAND.—A title to public land not surveyed or brought into the market by Government, sufficient to maintain ejectment, may be acquired only in one of two ways: either by a compliance with the requirements of the statute relating to possessory actions, or by actual possession or occupation of such land.—Staininger vs. Andrews, 4 Nev., p. 59.

REASONABLE TIME TO IMPROVE PUBLIC LAND.—A settler on public land is entitled to a reasonable time after his location to inclose it, or to make such improvements as may be necessary to its enjoyment; and during such time he will be protected precisely the same as if he had perfected by possession, by inclosure, or otherwise.—Id.

POSSESSION NECESSARY TO MAINTAIN EJECTMENT.—A settler on public land, if ousted after the lapse of a reasonable time within which to improve it, can recover against the person in possession only by showing an actual notorious prior possession.—Id.

SANKEY VS. NOYES, 1 Nev. 68, APPROVED—As to possession of public land required to maintain ejectment.—Id.

ACTUAL POSSESSION.—Actual possession of land is the purpose to enjoy the same, united with or manifested by such visible acts, improvements, or inclosures as will give to the locator the absolute and exclusive enjoyment of it.—Id.

REASONABLE DILIGENCE IN TAKING ACTUAL POSSESSION.—A locator upon public land, who shows that he first entered upon it, marked out the boundaries, and diligently proceeded, or diligently made preparations to do such acts as were necessary to constitute an actual possession, will be entitled, even without showing an actual possession, to recover against a person subsequently entering.—Id.

QUESTION OF FACT.—The question as to whether a settler on public land has proceeded with reasonable diligence to follow up his location with the necessary improvements, so as to recover against a subsequent possessor, is a question of fact for the jury.—Id.

POSSESSION TO MAINTAIN TRESPASS QUARE CLAUSUM FREGIT.—To maintain an action of trepass *quare clausum fregit*, it was formerly held necessary for the plaintiff to establish an actual possession of the *locus in quo;* but under more modern decisions a constructive possession is held sufficient.—Cochraine vs. The Bullion Co., 4 Nev., p. 369.

RIGHT OF POSSESSION IN DEFENDANT.—Actual possession of real estate, even though wrongful, is sufficient to support an action of trespass *quare clausum fregit* against a mere stranger or intruder, but not against the rightful owner.

RIGHT OF PRE-EMPTOR TO GOVERNMENT LAND.—Where a person in actual possession of Government land has filed his declaratory statement for the purpose of preëmpting it, and the local Land Office has decided in his favor, and accepted from him the Government price, and given him the usual receipt, he becomes entitled to the possession thereof, and may maintain trespass *quare clausum fregit* in relation thereto, even against a prior settler.—Id.

RECOGNIZED PRE-EMPTION RIGHTS.—As between mere settlers on Government land, none of whom claim under the Government, priority of possession must prevail; but when the Government, by its proper tribunals, decides a particular person entitled, its decision, in the absence of fraud, is evidence of such person's right of possession as superior to any acquired by mere priority, unaccompanied by any recognition on the part of the Government.—Id.

EFFECT OF LAND OFFICE DECISIONS ON PRE-EMPTION CLAIMS.—The decision of the Register and Receiver of the United States Land Office in favor of an applicant for preëmption of public land, is evidence not only that such person is entitled to a patent, but also that he has settled upon and improved the land, and is an acknowledgment that his settlement and possession are lawful, and in accordance with the will of the Government.—Id.

THE SAME.—Though the Commissioner of the General United States Land Office has a supervisory control over the action of the local Land Offices, their decisions in favor of preemption claimants will, until reversed, be received as evidence of right of possession in such claimants.—Id.

PRE-EMPTION RIGHTS RELATE BACK TO FIRST STEPS.—The decision of the local Land Office in favor of a preëmption right, is a confirmation by the government of all acts done by the preëmptor towards acquiring title, and a recognition that his possession, from the time he took the first steps to obtain title, was rightful; and in such case the preëmptor in an action for trespass *quare clausum fregit* upon the land, may show that he paid for the land after the trespass complained of.—Id.

PRE-EMPTION RIGHTS BEFORE PATENT AS EVIDENCE.—Where the plaintiff, in an action of trespass *quare clausum fregit*, offered to prove that he had taken steps to acquire title to the *locus in quo*, which was government land, by filing a declaratory statement as a preëmption settler, that the proper local Land Office had decided in favor of his claim, accepted from him the government price, and given him the usual receipt therefor; and the Court excluded the proposed testimony, and there was a judgment for defendant; and afterwards the Court, on being satisfied that it had erred in such exclusion, granted the plaintiff a new trial: *Held*, that the evidence, though the payment offered to be shown was subsequent to the trespass complained of, was competent and admissible, and the new trial properly granted.—Id.

STAININGER v. ANDREWS, 4 Nev., p. 59, to the effect that a person claiming public land should be deemed in the actual possession of all within his marked boundaries while diligently prosecuting the work necessary to subject it to his dominion or control, cited with approval.—Robinson v. Imperial Co., 5 Nev., p. 44.

CHAPTER XI.

OF ACTIONS BY CORPORATIONS AND ASSOCIATIONS AGAINST INDIVIDUAL MEMBERS, AND JOINT TENANTS OR TENANTS IN COMMON NOT MEMBERS THEREOF.

SECTION 86. Mining corporations may sue delinquents.
87. Intention of suit to be published.
88. Majority of members to authorize suit.

SECTION 89. Competent witnesses.
90. Application of Act.

SUITS AGAINST JOINT TENANTS OR TENANTS IN COMMON, OR COPARCENERS.

91. Mining companies may bring suit.
92. Money expended or indebtedness assumed.
93. Who may join in suit; issue of fact; judgment to be separate.
94. What summons shall specify.
95. Where suit to be brought; service of summons.
96. Lien.
97. Sales to be absolute.
98. Acts repealed.

ACT OF FEBRUARY TWENTIETH, EIGHTEEN HUNDRED AND SIXTY-FOUR, AMENDED.

99. Application of Act.

An Act empowering corporations and associations for mining to sue individual members.

[Approved December 19, 1862, p. 72.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Mining corporations may sue delinquents.

86. SECTION 1. Corporations, and associations, and companies, formed for mining purposes, are hereby authorized, in their corporate or associated name, to institute suits against any one or more of their members who may be delinquent in the payment of their assessments.

Intention of suit to be published.

87. SEC. 2. Before such suit is brought before any Court having jurisdiction of the amount, such delinquent, and the amount he may owe, and the intention to institute suit thereon, shall be advertised in a newspaper published in the county where the mining claim is located, and if no newspaper be published in such county, then in a newspaper published in the nearest adjoining county, for at least once a week for one month before such suit is instituted.

Majority of members to authorize suit.

88. SEC. 3. It shall be proved on the trial of such suit that the trustees or managing agents of said corporation, or association, or company, were fully authorized to institute such suit by a majority of the members of said corporation, or association, or company.

Competent witnesses.

89. SEC. 4. The members of such corporation, association, or company, shall be competent witnesses to establish the assessment and indebtedness of the delinquent member.

Application of Act.

90. SEC. 5. This Act shall apply only to such corporations, associations, and companies, who are actually engaged in mining, and for delinquency in assessments for mining.

An Act for the encouragement of mining.

[Approved March 7, 1865, p. 228.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

91. SECTION 1. When three or more persons, owning or claiming as joint tenants, tenants in common, or coparceners, a majority of the number of feet, shares, or interests in any mining claim in this State, shall have formed, or shall hereafter form themselves into a corporation or organized association, for the purpose of working and developing such mining claim, and shall actually proceed to work and develop the same, such corporation or association may, without demand, except by commencement of action, institute in any Court of competent jurisdiction, suit in its corporate or associate name, as upon an implied contract for the payment of money, against any person not a stockholder in or member of such corporation or association, owning or claiming to own in said mining claim as joint tenant, tenant in common, or coparcener, for his or her proportion of the money actually expended, or indebtedness assumed by such corporation or association, in the actual and necessary working and development of said mining claim. (¹) **Mining companies may bring suit.**

92. SEC. 2. The proportion of money expended or indebtedness assumed by such corporation or association, and for the payment of which such joint tenant, tenant in common, or coparcener, is made liable under the provisions of this Act, shall be deemed such an amount of money or indebtedness as bears the same proportion to the whole amount of money expended or indebtedness assumed, as the interest in the mining claim owned or claimed by such joint tenant, tenant in common, or coparcener, bears to the whole of the mining claim. **Money expended or indebtedness assumed.**

93. SEC. 3. Any number of such joint tenants, tenants in common, or coparceners, may be joined as parties defendant in any suit instituted under the provisions of this Act; but each defendant shall be entitled to plead separately; and when the cause shall be tried by jury, as many of the separate issues of fact as may be agreed upon by the parties may be determined by the same jury. Judgment shall be rendered for or against each defendant separately, and the costs of suit may be apportioned among the several parties defendant, against whom judgment may be rendered, in such manner as to the Court may appear just and equitable; *provided*, that in all cases the defendant, prior to the institution of suit under the provisions of this Act, shall be entitled to three weeks notice of the intention of such corporation or association to institute such suit, which notice may be either personally or by the publication in some newspaper published in the county within which such mining claim is located; and if none be published in said county, then in the nearest adjoining county. **Who may join in suit.** **Issue of facts.** **Judgment to be separate.**

What summons shall specify.

94. Sec. 4. The summons shall specify: First, the amount of money actually expended, or indebtedness assumed, by such corporation or association, in the actual and necessary working and development of said mining claim; and, second, the amount due from each joint tenant, tenant in common, or coparcener, as his or her proportion of such money or indebtedness.

Where suit to be brought.

Service of summons.

95. Sec. 5. All suits instituted under the provisions of this Act shall be brought in the county within which the mining claim may be located; and where the defendant is a non-resident of the county within which suit is brought, but a resident of the State, service of summons may be had personally, as in other cases, or by publication in the same manner as provided by law for service of summons by publication where the defendant is a non-resident of the State and a resident of the State of California; and all of the provisions of law regulating proceedings in other civil cases shall, so far as the same are applicable, apply to suits instituted under this Act.

Lien.

96. Sec. 6. The amount of money expended, or indebtedness assumed, by such corporation or association, as the proportion due from such joint tenant, tenant in common, or coparcener, for the actual and necessary working and development of said mining claim, shall be a lien in favor of such corporation or association upon the interest of such joint tenant, tenant in common, or corparcener, in such mining claim, from the time such money was expended, or indebtedness assumed, by such corporation or association; which lien shall bind such interest from the time of such payment or assumption as against any subsequent purchaser, mortgagee, or other person acquiring a lien upon, or title to, or interest in, the same. Suit may be instituted against the person owning or claiming such interest at the time of the commencement of the action for the recovery of the whole amount due upon such interest; and all judgments rendered in any action instituted under the provisions of this Act, and any execution issued thereon, shall bind and run against such interest, and no other property of the defendant shall be subject to execution on said judgment.

Sales to be absolute.

97. Sec. 7. All sales of any interest in a mining claim under an execution issued on a judgment obtained in any suit instituted under the provisions of this Act shall be absolute, and the purchaser shall be entitled to the immediate possession of the interest purchased by him at such sale.

Acts repealed.

98. Sec. 8. An Act entitled "An Act for the encouragement of mining," passed by the Legislative Assembly of the Territory of Nevada, approved February twentieth (20th), eighteen hundred and sixty-four (1864), is hereby repealed, and all rights of action accrued under said Act shall be commenced and prosecuted under the provisions of this Act; *provided*, that such repeal shall not in any manner affect any action already commenced under said Act; but all such actions shall be prosecuted thereunder, the same as though said Act was not hereby repealed.

(1) If one partner or tenant in common, after having become associated with his copartners in the development of a claim, voluntarily leave it in the possession of his cotenants, and refuses to bear his just proportion of the expenses incurred by

them in the development of it, and should afterwards bring his action to recover his interest, upon a proper showing to the equity side of the Court, relief would be refused until he had paid his full proportion of the expense incurred in such development.—Mallet v. Uncle Sam G. & S. M. Co., 1 Nev., p. 189.

An Act to amend an Act of the Legislative Assembly of the Territory of Nevada, entitled "An Act for the encouragement of mining," approved February twentieth, eighteen hundred and sixty-four, p. 53. (a)

[Approved March 9, 1865, p. 135.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

99. SEC. 5. This Act shall apply to all corporations or associations actually engaged in mining in this State, whether formed under the laws of any other State, country, or Territory, or having their principal place of business out of this State, or whose trustees, managing agents, or directors, or a majority thereof, reside out of this State. Application of Act.

(a) The Act which this Act amends was repealed in 1865. See Sec. 98 above.

CHAPTER XII.

OF ACTIONS BY AND AGAINST COUNTIES.

SECTION 100. Actions, where brought.
101. Original process and papers, service of.
102. Duty of officers.
103. Actions in name of county.

An Act prescribing the manner of commencing actions by or against counties.

[Approved February 16, 1864, p. 45.]

Be it enacted by the Governor aad Legislative Assembly of the Territory of Nevada, as follows:

100. SECTION 1. Actions against a county may be commenced in the District Court of the Judicial District embracing said county; *provided*, that actions between counties shall be commenced in a Court of competent jurisdiction in any county not a party to the action. (1) Actions, where brought.

Original process and papers. service of. 101. SEC. 2. In counties where there is a Board of County Commissioners, having an acting Chairman or President of such Board, the original process and papers shall be served on such Chairman or President, in the same manner as upon private persons; when there is no such Chairman or President, they shall in like manner be served on the Probate Judge of the county.

Duty of officers. 102. SEC. 3. Immediately on the service of such process, it shall be the duty of the officers so served to deliver such process, and all papers accompanying the same, to the District Attorney for such county.

Actions in name of county. 103. SEC. 4. Actions brought for or against a county shall be in the name of such county.

(1) Sec. 1 of "An Act prescribing the manner of commencing and maintaining actions by or against counties," passed in eighteen hundred and sixty-four, authorizes actions to be brought and maintained against counties, and is not merely an Act providing where such actions may be brought.—Waitz v. Ormsby County, 1 Nev., p. 370.

CHAPTER XIII.

ACTIONS AND ACCOUNTS AGAINST THE STATE.

SECTION 104. When actions may be brought against the State; summons to be served on the Controller.
105. Duties of Attorney General and Controller; appropriations for expenses of action; appeals may be taken.
106. Controller required to draw warrants, when.

ACCOUNTS AGAINST THE STATE.

107. Duplicate to be filed.
108. Acts repealed.

An Act to enable a certain class of claimants against the State to appeal to the Courts.

[Approved March 2, 1869, p. 104.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

When actions may be brought against the State. 104. SEC. 1. Any officer or person who has presented a claim against the State for services or advances authorized by law, and for which an appropriation has been made, but of which the amount has not been fixed by law, to the Board of Examiners, which claim said Board or the State Controller has refused to audit and allow, in whole or in part, may commence an action in any Court in Ormsby County having jurisdiction of the amount, for the recovery of such portion of the claim as shall have been rejected. In such action the State of Nevada shall be named as defendant, and the summons shall be served upon the State Controller, and the action shall proceed as other civil actions to final judgment.

Summons to be served on the Controller.

105. SEC. 2. The Attorney General shall defend all such actions on the part of the State. The Controller shall cause to be subpœnaed and examined such witnesses, and procure and cause to be introduced such documentary evidence as he shall deem necessary for the defense, and the sum of five hundred dollars is hereby appropriated, out of moneys in the Treasury not otherwise appropriated, for the purpose of defraying any necessary expense in obtaining evidence and payment of costs for the defense of such actions. Appeals may be taken in all such actions by the Controller on behalf of the State.

Duties of Attorney General and Controller.

Appropriations for expenses of action. Appeals may be taken.

106. SEC. 3. Upon the presentation of a certified copy of a final judgment in favor of the claimant in any such action, the Controller shall draw his warrant in favor of the claimant for the amount awarded by the judgment.

Controller required to draw warrants, when.

An Act relating to accounts against the State.

[Approved February 23, 1871, p. 70.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

107. SECTION 1. The State Printer, and all other persons having claims against the State, shall file with the State Board of Examiners an itemized duplicate of their accounts.

Duplicate to be filed.

108. SEC. 2. Chapter LVIII of the laws of Nevada, approved February twenty-seventh, one thousand eight hundred and sixty-six, entitled "An Act relating to accounts against the State," and all other Acts, or parts of Acts, in conflict with this Act, are hereby repealed.

Acts repealed.

CHAPTER XIV.

OF SECURITY FROM DANGER FROM EXCAVATIONS.

SECTION 109. Safeguards to be erected.
110. Notice of violation of preceding section may be filed; what notice shall state.
111. Upon filing notice, the Justice or Judge to issue an order, etc.
112. What notice shall require; liable to fine in addition to judgment.

SECTION 113. Suits to be in the name of the State.
114. County Commissioners shall fence abandoned excavations; expenses, how paid.

An Act to secure persons and animals from danger arising from mining and other excavations.

[Approved February 8, 1866, p. 59.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Safeguards to be erected.

109. SECTION 1. Any person or persons, company or corporation, who shall hereafter dig, sink, or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation, or hole, whether used for mining or otherwise, or whether dug, sunk, or excavated, for the purpose of mining, to obtain water, or for any other purpose, within this State, shall, during the time they may be employed in digging, sinking, or excavating, or after they may have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences, or other safeguards, and keep the same in good repair, around such works or shafts, sufficient to securely guard against danger to persons and animals, from falling into such shafts or excavations.

Notice of violation of preceding section may be filed.

What notice shall state.

110. SEC. 2. Any person being a resident of the county, and knowing, or having reason to believe, that the provisions of section one of this Act are being or have been violated within such county, may file a notice with any Justice of the Peace or Police Judge therein, which notice shall be in writing, and shall state: First—The location, as near as may be, of the hole, excavation, or shaft. Second—That the same is dangerous to persons or animals, and has been left, or is being worked, contrary to the provisions of this Act. Third—The name of the person or persons, company or corporation, who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein. Fourth—If abandoned, and no claimant; and, Fifth—The estimated cost of fencing, or otherwise securing the same against any avoidable accidents.

Upon filing notice, the Justice or Judge to issue an order, etc.

111 SEC. 3. Upon the filing of the notice, as provided for in the preceding section, the Justice of the Peace, or Judge of the Police Court, shall issue an order, directed to the Sheriff of the county, or to any Constable or City Marshal therein, directing such officer to serve a notice, in manner and form as is prescribed by law for service of summons upon any person or persons, or the authorized agent or agents, of any company or corporation named in the notice on file, as provided in section two of this Act.

What notice shall require.

112. SEC. 4. The notice thus served shall require the said persons to appear before the Justice or Judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show, to the satisfaction of the Court, that the provisions of this Act have been complied with, or if he or they fail to appear, judgment

will be entered against him or them for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this Act, which judgments and fines shall be adjudged and collected as provided for by law. Liable to fine in addition to judgment.

113. SEC. 5. Suits commenced under the provisions of this Act shall be in the name of the State of Nevada, and all judgments and fines collected shall be paid into the County Treasury for county purposes. Suits to be in the name of the State.

114. SEC. 6. If the notice filed with the Justice of the Peace, or Police Judge, as aforesaid, shall state that the excavation, shaft, or hole, has been abandoned, and no person claims the ownership thereof, said Justice of the Peace, or Judge, shall notify the Board of County Commissioners of the county, or either of them, of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid, first, out of the fines and judgments collected in accordance with the provisions of this Act, as other county expenses; *provided*, that nothing herein contained shall be so construed as to compel the County Commissioners to fill up, fence, or otherwise guard, any shaft, excavation, or hole, unless in their discretion the same may be considered dangerous to persons or animals. County Commissioners shall fence abandoned excavations. Expenses, how paid.

CHAPTER XV.

OF DEATH BY WRONGFUL ACT, NEGLECT, OR DEFAULT.

SECTION 115. Death by wrongful act, etc; action for damages.
116. Proceeds of judgment not liable for debts; how distributed; in whose name action shall be brought; jury may give pecuniary and exemplary damages.

An Act requiring compensation for causing death by wrongful acts, neglect, or default.

[Approved February 28, 1871, p. 90.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

115. SECTION 1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neg- Death by wrongful act, etc.

Action for damages. lect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the persons who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured; and although the death shall have been caused under such circumstances as amount in law to a felony.

Proceeds of judgment not liable for debts. 116. SEC. 2. The proceeds of any judgment obtained in any action brought under the provisions of this Act shall not be liable for any debt of the deceased; *provided*, he or she shall have left a husband, wife, child, father, mother, brother, sister, or child or children of a deceased child; but shall be distributed as follows: First—If there be a surviving husband or wife, How distributed. and no child, then to such husband or wife; if there be a surviving husband or wife, and a child or children, or grandchildren, then, equally to each, the grandchild or children taking by right of representation; if there be no husband or wife, but a child or children, or grandchild or children, then to such child or children and grandchild or children by right of representation: if there be no child or grandchild then to a surviving brother or sister, or brothers or sisters, if there be any; if there be none of the kindred hereinbefore named, then the proceeds of such judgment shall be disposed of in the manner authorized by law for the disposition of the personal property In whose name action shall be brought. of deceased persons; *provided*, every such action shall be brought by and in the name of the personal representative or representatives of such deceased person; *and, provided further*, the jury in every such action may give such damages, pecuniary Jury may give pecuniary and exemplary damages. and exemplary, as they shall deem fair and just, and may take into consideration the pecuniary injury resulting from such death to the kindred as herein named.

CHAPTER XVI.

OF THE PROTECTION OF MINES AND MINING CLAIMS.

SECTION 117. Actions for injuries sustained by mismanagement of adjacent companies.
118. Lien of judgment and continuation thereof.
119. Survey may be applied for; what affidavit shall state; notice of application, and how served; order of Court; costs.

An Act for the protection of mines and mining claims.

[Approved December 17, 1862, p. 33.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

117. SECTION 1. Any person or persons, company, or corporation, being the owner or owners of or in possession, under any lease or contract, for the working of any mine or mines within the Territory of Nevada, shall have the right to institute and maintain an action, as provided by law, for the recovery of any damages that may accrue by reason of the manner in which any mine or mines have been or are being worked and managed by any person or persons, company, or corporation, who may be the owner or owners, or in the possession of and working such mine or mines under a lease or contract, and to prevent the continuance of the working and managing such mine or mines in such manner as to hinder, injure, or by reason of tunnels, shafts, drifts, or excavations, the mode of using, or the character and size of the timbers used, or in anywise endangering the safety of any mine or mines adjacent or adjoining thereto. **Actions for injuries sustained by mismanagement of adjacent companies.**

118. SEC. 2. Any judgment obtained for damages under the provisions of this Act shall become a lien upon all the property of the judgment debtor or debtors, not exempt from execution, in the Territory of Nevada, owned by him, her, or them, or which may afterwards be acquired, as is now provided for by law, which lien shall continue two years, unless the judgment be sooner satisfied. **Lien of judgment and continuation thereof.**

119. SEC. 3. Any person or persons named in the first two sections of this Act, shall have the right to apply for and obtain from any District Court, or the Judge thereof, within this Territory, an order of survey, in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and as far as known, the names of such parties; also, the location of the mine or mines of the parties making such application, and that he has reason to believe, and does believe, that the said parties complained of, their agent, or employés, are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant. Upon the filing of the affidavit as aforesaid, the Court or Judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application will be heard, and shall cite the party to appear in not less than five nor more than ten days from the date thereof, to show cause why an order of survey should not be granted; and upon good cause shown, the Court or Judge shall grant such order, directed to some competent **Survey may be applied for.** **What affidavit shall state.** **Notice of application, and how served.**

Order of Court.

surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the Court, and report the result and conclusions to the Court, which report shall be filed with the Clerk of said Court. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in the first two sections of this Act, by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case, such costs shall be taxed against the defendant as other costs in the suit. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey. (a)

Costs.

(a) Survey may be made in actions for recovery of real property.—Sec. 1321, post.

CHAPTER XVII.

OF THE CONDEMNATION OF PROPERTY FOR MINING PURPOSES.

SECTION 120. Property, how condemned for mining purposes.
121. Petition, what to set forth.
122. Petitioner to pay to Clerk amount tendered to defendant.
123. Parties entitled to jury trial; when plaintiff entitled to recover.
124. Costs to abide event of action; defendant to pay costs if the property condemned shall not exceed amount tendered.
125. Practice, how governed.

An Act to provide for the condemnation of real estate and other property required for mining purposes.

[Approved March 3, 1866, p. 196.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Property, how condemned for mining purposes.

120. SECTION 1. Whenever any real estate, or other property, in this State, is or becomes necessary for the convenient and successful working of a mining claim, and the person or persons owning or possessed of the same, refuse to sell or convey the same to any person, mining company, or corporation needing the same for mining purposes, at such valuation or price as such person, company, or corporation may deem reasonable and just, said person, mining company, or corporation shall select one appraiser, and said owner or owners shall select one; *provided*, that if the owner or owners of such prop-

erty, as aforesaid, shall refuse or fail to appoint or select an appraiser, as provided for in this section, it shall be the duty of the District Court to appoint such appraiser, and the two so selected shall select a third, and the three shall appraise the real estate or property sought to be appropriated, after having been first sworn before some officer entitled to administer oaths to make a true appraisement thereof to the best of their knowledge and ability. Within five days after the report of said appraisers, notice of which shall be given to both parties, the person or persons owning the property shall deliver to the person, company, or corporation requiring said property a good and sufficient deed or conveyance of the premises, upon the payment of the amount named in the report of the appraisers; and upon such person or persons failing so to do, it shall be lawful for the person, company, or corporation requiring said property as aforesaid, to petition the District Court of the judicial district within which said real estate or other property is situated, for a condemnation and sale of the same to such person, mining company, or corporation. **Same.**

121. SEC. 2. Said petition shall set forth, amongst other things, that said real estate or property, particularly describing the same, is needed by said person, mining company, or corporation for the convenient and successful working of his, or their, or its mining claim or ground, owned or possessed by said person, company, or corporation, or for the erection of buildings, roads, or works, to be used in working the same, the fair valuation of such real estate or other property so needed and sought to be condemned; that petitioner has tendered the amount of its value to the defendant or defendants, their agents, or other legal representatives, before the commencement of the action, or caused it to be done; that the defendant or defendants, their agents or legal representatives, have refused to accept the sum so tendered; and shall conclude with a prayer that the defendant or defendants be summoned to appear in the action, and show cause, if any can be shown, why the said property should not be by the Court condemned, and he or they, said defendants, be compelled to convey and deliver a deed of the same to said petitioner or petitioners. **Petition, what to set forth.**

122. SEC. 3. At the time of the commencement of the action, the petitioner or petitioners shall pay, or cause to be paid, to the Clerk of said District Court, the sum or amount of money so tendered to the defendant or defendants, before the commencement of the action, and the same shall remain in the custody of the Clerk for, and on behalf of, the defendant or defendants in said action, and subject to his or their acceptance until the said cause is tried and determined. **Petitioner to pay to Clerk amount tendered to defendant.**

123. SEC. 4. Upon the trial of the cause, either party shall be entitled, if demanded, to a trial by jury, as in civil cases at law; and upon the trial it shall be made satisfactorily to appear that said real estate or other property is necessary for the convenient and successful working of the mining claim or ground mentioned in the petition, in order to entitle the plaintiff or plaintiffs in said action to recover; and if said fact satisfactorily appear from the evidence, said Court (if the same is tried without the intervention of a jury), or the jury before whom **Parties entitled to jury trial.**

When plaintiff entitled to recover.

said cause is tried, shall proceed in the same action to assess and determine the value of said real estate or other property at the time of the institution of said action; and upon the payment of said sum or amount of money by the petitioner to the defendant or defendants in said action, or to the Clerk of said Court, for his or their use, said petitioner or petitioners shall be entitled to have and recover a judgment and decree of said Court in its, his, or their favor, condemning said real estate or other property to his, its, or their own sole use and possession, and shall direct and decree that the defendant or defendants, or in their stead, a Commissioner (to be appointed for such purpose by the Court), proceed to make, execute, acknowledge, and deliver to the plaintiff or plaintiffs in said action a deed or conveyance thereof.

Costs to abide event of action. Defendant to pay costs if the property condemned shall not exceed amount tendered.

124. SEC. 5. Costs in said action, except the costs of making, executing, and delivering the deed of conveyance, shall abide the event of the suit, as in other cases; *provided*, however, that in case the value of the land or other property so condemned shall not exceed the sum shown to have been originally tendered therefor, the defendant or defendants shall be liable for the costs of said action.

Practice, how governed.

125. SEC. 6. The practice in actions brought under this Act shall be governed by the same rules as other civil actions at law, except as is otherwise provided in this Act.

CHAPTER XVIII.

OF LIENS TO MECHANICS AND OTHERS.

SECTION 126. Who entitled to lien on building.
127. Statement to be filed; copy of to be served.
128. Liens to laborers on railroads, etc.; statement to be filed; sub-contractor, etc.; statement; service; lien to extend to franchise.
129. Liens to miners; sub-contractor; proviso.
130. Liens to laborers and others on lots; sub-contractor.
131. Sub-contractors to have valid lien; may sue and recover.
132. Land occupied by building subject to lien; preference of lien.
133. Limitation.
134. How enforced; Court how to proceed; when waived; premises may be sold; apportionment of proceeds.
135. Right of action not affected.
136. Satisfaction to be entered.
137. Lien for cutting and cording wood; proviso; judgment, how satisfied; Justices Court, jurisdiction of.
138. Liens to foundrymen, etc.
139. Creditors and assignee may hold lien.
140. Acts repealed.

An Act to secure liens to mechanics and others, and to repeal all other Acts in relation thereto.

[Approved March 4, 1871, p. 123.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Who entitled to lien on building.

126. SECTION 1. All artisans, mechanics, and others, who shall perform work or labor, or furnish materials to the amount of twenty-five dollars or more, for the construction or repairing of any building or other superstructure, shall have and may claim and hold a lien upon such building or superstructure, for the amount and value of the work and labor so performed, or materials furnished, by each respectively.

Statement to be filed.

127. SEC. 2. Any person claiming a lien, as provided in section one of this Act, and wishing to avail himself of the benefits thereof, shall file in the County Recorder's office of the county in which such building or superstructure is situated, within sixty days after such building or superstructure, work of construction, or any repairs, shall have been completed, a statement containing: First—A notice of intention to claim and hold a lien. Second—A description of the property to be charged therewith. Third—An abstract of indebtedness, showing the whole amount of debit, whole amount of credit, and the balance due to the claimant, which abstract of indebtedness shall be verified by the claimant, or by some other person in his behalf. And it shall be the duty of the County Recorder to file and record such statement in a separate book provided for that purpose; and from the time of such filing all persons shall be deemed to have notice thereof. And provided that when such lien is claimed by a sub-contractor, journeyman, or any other person than a contractor, performing work or labor, or furnishing materials, the statement aforesaid shall be filed within thirty days after the time when the last work or labor was performed, or the last materials were furnished by him. And within ten days after the filing of the statement aforesaid, he shall serve a copy thereof on the owner or owners of such building or superstructure, or the agent of such owner or owners, by delivering the same personally, or by posting the same in a conspicuous place on the building or superstructure to be charged with said lien.

Copy of to be served.

Liens to laborers on railroads, etc.

128. SEC. 3. All mechanics, laborers, and others, who shall perform work or labor, or furnish materials, to the amount of twenty-five dollars or more, for the construction or repairing of any railroad, tramway, toll road, canal, water ditch, flume, aqueduct, or reservoir, shall have and may, each respectively, claim and hold a lien upon such railroad, tramway, toll road, canal, water ditch, flume, aqueduct, or reservoir, for the amount and value of the work or labor so performed, or material furnished, by filing in the County Recorder's office of the county in which the property to be charged with such lien is situated, within sixty days after such railroad, tramway, toll road, canal, water ditch, flume, aqueduct, or reservoir, or

Statement to be filed.

Sub-contractor, etc. repairs, shall have been completed, a statement as required by section two of this Act, or if such lien is claimed by a subcontractor, journeyman, or any other person than a contractor, performing work or labor, or furnishing materials, then by filing such statement within thirty days after the time when the last work or labor was performed, or the last materials were furnished by him, and by serving a copy of such statement upon the owner or owners of such property, or the agent of such owner or owners, within the time and in the manner, except as to posting, provided in said section. And in case personal service cannot be had, service may be made by depositing a copy of said statment, postage paid, in the Post Office, directed to such owner or owners, or such agent, at his or their last known place of residence. And any lien so claimed shall extend to and include all franchises, charter privileges, and rights of way that may in anywise pertain to any such railroad, tramway, toll road, canal, water ditch, flume, aqueduct, or reservoir.

Statement.

Service.

Lien to extend to franchise.

Liens to miners.

129. SEC. 4. All miners, laborers, and others, who work or labor to the amount of twenty-five dollars or more, in or upon any mine, lode, or deposit, yielding metals or minerals of any kind, or upon any shaft, tunnel, adit, or other excavation designed or used for the purpose of draining or working any such mine, lode, or deposit; and all persons who shall furnish any timber or other materials, to the amount of twenty-five dollars or more, to be used in or about any such mine, lode, or deposit, shall have and may, each respectively, claim and hold a lien upon such mine, lode, or deposit, for the amount and value of the work or labor so performed, or materials furnished, by filing in the County Recorder's office of the county in which such mine, lode, or deposit is situated, within sixty days after the time when the last work or labor was performed, or the last materials were furnished by him, a statement as required by section two of this Act. Or if such lien is claimed by a sub-contractor, or any other person than a contractor, performing work or labor, or furnishing materials, then by filing such statement within thirty days after the time when the last work or labor was performed, or the last materials were furnished by him, and by serving a copy of such statement upon the owner or owners of such mine, lode, or deposit, or his or their agent, within the time and in the manner provided in section three of this Act; *and, provided*, that when two or more such lodes or deposits, owned or claimed by the same person or persons, shall be worked through a common shaft, tunnel, incline, or adit, then all the lodes or deposits so worked shall, for the purposes of this Act, be deemed one mine.

Sub-contractor.

Proviso.

Liens to laborers and others on lots.

130. SEC. 5. All laborers and other persons who shall perform work or labor to the amount of twenty-five dollars or more upon any building lot or lots, in any city, town, or village, or for the purpose of improving such lot or lots, by filling in or grading such lot or lots, shall have and may each respectively claim and hold a lien upon such lot or lots, for the amount and value of the work or labor so performed, by filing in the County Recorder's office of the county in which such lot or lots are situated, within sixty days after the time when the last work or

labor was performed by him, a statement, as required by section two of this Act. Or if such lien is claimed by a sub-contractor, or any other person than a contractor performing work or labor, then by filing such statement within thirty days after the time when such work or labor was performed by him, and by serving a copy of such statement upon the owner or owners of such lot or lots within the time and in the manner provided in said section. Sub-contractor.

131. SEC. 6. Every sub-contractor, journeyman, laborer, or other person performing work or labor, or furnishing materials, shall, under the provisions of this Act, have a valid lien upon the building or superstructure, or other property upon which a lien may be claimed, as hereinbefore provided, and upon which such work or labor was performed, or for which such materials were furnished, to the extent of the amount due from the owner or owners to the contractor at the time of the service of the notice aforesaid, or the amount thereafter to become due, regardless of any claims the contractor, at whose instance such work or labor was performed or materials were furnished, may have against the owner or owners of such building or superstructure, or other property; and if any money be due, or is to become due, under the contract, from the owner or owners to such contractor, upon being served with a copy of the statement, as provided in section two of this Act, by a sub-contractor, journeyman, or laborer, as aforesaid, such owner or owners may withhold out of any moneys due, or to become due under the contract, a sufficient amount to satisfy the lien claimed by such sub-contractor, journeyman, or laborer until the validity thereof shall have been established by proper legal proceedings, if the same be contested; and if so established, the amount thereof shall be a valid set-off to that extent in favor of such owner or owners, and against the contractor. And after such copy of the statement shall have been properly served upon such owner or owners, in case of failure to comply with the provisions of this section, then such sub-contractor, journeyman, or laborer may sue and recover from such owner or owners the amount of any damages he may have sustained by reason of such failure. And no payment of money made fraudulently by such owner or owners to such contractor, for the purpose of avoiding any anticipated lien of a sub-contractor, journeyman, or laborer, shall be valid as against such sub-contractor, journeyman, or laborer, but shall as against them be held and deemed as not having been made; and no sub-contractor, journeyman, or laborer who fraudulently files or claims a lien for more than is due him or them shall enforce the same or any part thereof, as against other sub-contractors, journeymen, or laborers. No attachment served upon any money due a contractor from the owner or owners of any building or superstructure, or other property upon which a lien has been claimed by a sub contractor, journeyman, or laborer, shall be valid until such lien shall have been satisfied or adversely determined or barred by limitation. Sub-contractors to have valid lien. May sue and recover.

132. SEC. 7. The land occupied by any building or superstructure, railroad, tramway, toll road, canal, water ditch, flume, aqueduct or reservoir, mine, lode or deposit, building lot or lots, and so much land contiguous to any building or superstructure, Land occupied by building subject to lien.

railroad, tramway, toll road, canal, water ditch, flume, aqueduct or reservoir, building lot or lots, mine, lode or deposit, as may be necessary for the convenient use and occupation of the same, shall be subject to the liens hereinbefore provided for, if at the time the work or labor was commenced or the first materials were furnished, such land was owned by, or was in the possession of, under a bona fide claim of title, the person or persons for whom, or at whose instance such work or labor was performed or materials were furnished; but if such person or persons hold less than a fee simple estate in such land, then only his or their interest therein shall be subject to such lien. Preference of lien. And all liens herein provided for, shall be preferred to every other lien or incumbrance which shall attach upon any property made subject thereto, subsequent to the time when the work or labor was commenced, or the first of the materials were furnished, and also to all mortgages and other incumbrances unrecorded at the time such work or labor was commenced, or the first of the materials were furnished; but nothing herein contained shall be construed as impairing any valid incumbrance upon any such land duly made and recorded before such work or labor was commenced, or the first of such materials were furnished.

Limitation. 133. SEC. 8. No lien claimed as hereinbefore provided shall continue, or bind any building or superstructure, or other property made subject thereto by the provisions of this Act, for a longer period than six months from the time of filing the same, unless an action be commenced in some Court of competent jurisdiction, within that time, to enforce the same, nor shall any such lien be continued for a longer period by any agreement to give credit thereon.

How enforced 134. SEC. 9. Said liens may be enforced by an action in any Court of competent jurisdiction, on setting out in the complaint the particulars of the demand, with a description of the premises sought to be charged with the lien; and at the time of filing the complaint and issuing the summons, the plaintiff shall cause a notice to be published, at least once a week for three consecutive weeks, in some newspaper published in the county, if there be one, and if not, then in such mode as the Court may determine, notifying all persons holding or claiming liens under the provisions of this Act, on said premises, to be and appear in said Court on a day specified therein, and during a regular term of such Court, and to exhibit then and there the proof of their said liens. Court, how to proceed. On the day appointed, the Court shall enter judgment according to the right of the parties, and shall by decree proceed to hear and determine the said claims in a summary way, or may refer the same to a referee, to ascertain and report upon said liens, and the amount justly due thereon; and all When waived. liens not so exhibited and proved, shall be deemed to be waived in favor of those which are so exhibited. On ascertaining the whole amount of said liens with which the said premises are justly chargeable, as hereinbefore provided, the Court shall Premises may be sold. cause said premises to be sold in satisfaction of said liens and costs of suit, and any party in whose favor such judgment may be rendered, may cause the premises to be sold within the time and in the manner provided for sales on execution, issued out of any District Court for the sale of real estate, and if the proceeds of such sale, after the payment of costs, shall not be sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the rights of the several parties. In case the proceeds of such sale amount to more than the sum of said liens and the cost of sale, then the remainder shall be paid over to the owner of said property; and each party whose claim is not satisfied in the manner hereinbefore provided, shall have personal judgment for the residue against the party legally liable for the same; *provided*, such party so liable has been personally summoned or has appeared in the action. Apportionment of proceeds.

135. SEC. 10. Nothing herein contained shall be construed to take away, or affect in any manner, any right of action which such contractor, sub-contractor, journeyman, or other person who shall have performed work or labor, or furnished materials for any such building or superstructure, or other property made subject to a lien as herein provided, would otherwise have against the person or persons for whom such work or labor was performed, or materials were furnished. Right of action not affected.

136. SEC. 11. The claimant of any such lien, filed as aforesaid, on the payment of the amount thereof, together with the cost of filing and recording such lien, and the acknowledgment of satisfaction, shall, at the request of any person interested in the property charged therewith, enter, or cause to be entered, an acknowledgment of satisfaction of the same, of record, within ten days after such request; and on failure to enter such satisfaction within that time, the claimant shall forfeit and pay to the person requesting the satisfaction, the sum of twenty dollars per day until the same shall be entered, to be recovered in the same manner as other debts. Satisfaction to be entered.

137. SEC. 12. All persons who shall perform work or labor upon any tract or tracts of land, by cutting and cording the wood or timber growing or being thereon, pursuant to a contract therefor, with the person or persons owning such tract or tracts of land, or in possession of the same, under a bona fide claim of title thereto, shall have and may, each respectively, claim and hold a lien upon the wood or timber so cut and corded, for the amount in value of the work or labor so performed, by retaining possession of the same until the whole amount due for such work or labor shall have been paid; *provided*, that any lien claimed and held as aforesaid, shall be deemed to be waived, unless an action be brought in some Court of competent jurisdiction, for the recovery of the amount for which such lien is claimed as security, within thirty days after such wood or timber shall have been taken in possession by the claimant; and the fact that such lien is claimed, shall be set out in the complaint, together with a description of, and the number of cords of wood or timber retained in possession by the claimant. If the judgment be for the plaintiff in such action, the execution shall direct the same, with costs, to be satisfied out of the wood or timber so retained, if the same shall be sufficient, if not, then the balance to be satisfied out of any other property Lien for cutting and cording wood. Proviso. Judgment, how satisfied.

Justices Court, jurisdiction of.

of the defendant, in the manner provided by law. Justices of the Peace shall have jurisdiction of all actions under the provisions of this Act, when the amount claimed does not exceed three hundred dollars. (1)

Liens to foundrymen, etc.

138. SEC. 13. All foundrymen and boiler makers, and all persons performing labor, or furnishing machinery, or boilers, or castings, or other materials for the construction or repairing, or carrying on of any mill, manufactory, or hoisting works, shall have a lien on such mill, manufactory, or hoisting works, for such work or labor done, or such machinery, or boiler, or castings, or other material furnished by each respectively; and all the provisions of this Act respecting the mode of filing, recording, securing, and enforcing the liens of contractors, sub-contractors, journeymen, laborers, and others, and the word superstructure, wherever it occurs in this Act, shall be applicable to the provisions of this section of this Act.

Creditors and assignee may hold lien.

139. SEC. 14. Two or more creditors of the same class may assign their claims, duly verified, to any other creditor or person of the same class; the assignee of such claims may claim and hold his lien, as provided in this Act.

Acts repealed.

140. SEC. 15. An Act of the Legislative Assembly of the Territory of Nevada, entitled "An Act for securing liens to mechanics and others," approved November twenty-first, eighteen hundred and sixty-one; also, an Act of the Legislature of the State of Nevada, entitled "An Act supplementary to an Act entitled 'An Act for securing liens to mechanics and others,' approved November twenty-first, eighteen hundred and sixty-one," approved February sixth, eighteen hundred and sixty-seven; also, an Act supplementary to an Act entitled "An Act for securing liens to mechanics and others, approved November twenty-first, eighteen hundred and sixty-one," approved February twelfth, eighteen hundred and sixty-nine, and all other Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed. (a)

(1) FORFEITURE OF RIGHTS AND LIEN UNDER CONTRACT BY NONCOMPLIANCE.—Where a person contracted to cut down the timber of another, and deliver the same by a certain time at a certain place, for a certain price to be then paid, and was to have a lien upon the wood for the stipulated payments, and he failed to deliver by the time specified, though, as he cut the wood, entitled to all his labor was worth: *Held*, that he had forfeited all right under the contract, and had no right of lien.—Hilgar vs. Edwards, 5 Nev., p. 85.

(a) Acts repealed, Stats. 1861, p. 35; 1867, p. 48; 1869, p. 61.

CHAPTER XIX.

OF THE PROTECTION OF THE WAGES OF LABOR.

SECTION 141. Wages made preferred claims.
142. Claims for wages against estates.
143. In case of attachment, etc.; disputed claims, action for; proviso.

An Act to protect the wages of labor.

[Approved February 21, 1873, p. 76.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

141. SECTION 1. That in all assignments of property, whether real or personal, which shall hereafter be made by any person or chartered company or corporation, or by any person or persons, owning or leasing real or personal property, to trustees or assignees on account of inability at the time of the assignment to pay his, her, or their debts, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such person or persons, or chartered company or corporation, shall be held and deemed preferred claims, and paid by such trustees or assignees, before any other creditor or creditors of the assignor; *provided*, that the claims of each miner, mechanic, salesman, servant, clerk, or laborer thus preferred, shall not exceed in value two hundred dollars of gold coin of the United States, and the services shall have been rendered or labor performed within ninety days next preceding said assignment. Wages made preferred claims.

142. SEC. 2. That in all cases of the death of any employer or employers, the wages of each miner, mechanic, salesman, servant, clerk, and laborer, for services rendered, or labor performed, within ninety days next preceding the death of the employer, shall rank after the funeral expenses of the deceased, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children, and be paid pro rata before all other claims against the estate of the deceased person or persons; *provided*, this Act shall in no way affect the homestead or other property exempted by law from forced sale, or any mortgage or lien lawfully obtained on the property of the deceased person before his or her death. Claims for wages against estates.

143. SEC. 3. In all cases of execution, attachments, and writs of a similar nature against the property of any person or persons, or chartered company or corporation, it shall be lawful for such miner, mechanic, salesman, servant, clerk, and laborer to give notice of their claim or claims, and the amount thereof, duly certified and sworn to by the creditor or creditors making the claim, to the officer executing either of such writs In case of attachment, etc.

at any time before the actual sale of property levied on; and such officer shall pay to such miners, mechanics, salesmen, servants, clerks, or laborers, out of the proceeds of the sale, the amount each is justly and legally entitled to receive for services rendered within ninety days next preceding the levy of the writ of execution, attachment, or other writ, not exceeding two hundred dollars, in gold coin of the United States; *provided*, if any or all of the claims so presented and claiming preference under this section shall be disputed by either the debtor or the creditor, the person presenting the same shall commence an action within ten days for the recovery thereof, and shall prosecute his action with due diligence, or be forever barred from any claim of priority payment thereof. But in case action is rendered necessary by the act as aforesaid, by either debtor or creditor, and judgment shall be had for said claim, or any part thereof, carrying costs, the costs attending the prosecution of said action, and legally taxable therein, shall likewise be a preferred claim with the same rank as the original claim; *and, provided further*, if the amount of assets, after deducting costs of levy and sale, shall not be adequate to the payment of all the preferred claims of this class, they shall be paid pro rata out of the money hereby made applicable thereto; *and, provided further*, that nothing in this Act contained shall be construed to affect any homestead, claims, mortgage, or lien of any description created and existing before the claim of such laborer accrued.

Disputed claims, action for.

Proviso.

CHAPTER XX.

OF LIENS TO RANCHMEN AND OTHER PERSONS.

SECTION 144. To have a lien upon animals for pasture, etc.; proviso; sales; fees.
145. Remainder to be paid to owner; when to be paid to County Treasurer.
146. Penalty for driving away animals without paying charges; proviso.

An Act to secure liens to ranchmen and other persons.

[Approved February 14, 1866, p. 65.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

To have a lien upon animals for pasture, etc.

144. SECTION 1. Any ranchman, or other person or persons, keeping corrals, livery or feed stables, or furnishing hay, grain, pasture, or otherwise boarding any horse or horses, mule

or mules, ox or oxen, or other animal or animals, shall have a lien upon and retain possession of the same, or a sufficient number thereof, until all reasonable charges are paid; or suit can be brought and judgment obtained for the amount of such charges, and execution issued and levied on said property; *provided*, nothing in this Act shall be so construed as to include any debt other than for the boarding, keeping, or pasture of such animal or animals, together with costs of suit and sale. Sales of such animal or animals shall be made as other sales of personal property under execution. The officer making such sale shall be entitled to such fees for his services as are allowed by law in cases of other sales of personal property. (1)

Proviso.

Sales.

Fees.

Remainder to be paid to owner.

145. SEC. 2. After paying all charges, together with costs of suit and sale, the remainder, if there be any, shall be paid to the owner or owners of such animal or animals, or, in case such owner or owners is or are out of the State, or cannot be found, to the Justice of the Peace before whom, or the Clerk of the Court in which, judgment is rendered. If said money is not called for by the owner or owners thereof within six months, said Justice or Clerk shall pay the same to the County Treasurer of his county for school purposes.

When to be paid to County Treasurer.

Penalty for driving away animals without paying charges.

146. SEC. 3. Any person or persons who shall take and drive away any such animal or animals, while in the possession of such ranchman or person boarding the same, without having first paid all reasonable charges due thereon, and against the consent of such ranchman or other person, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any Court having jurisdiction of the same, shall be fined in any sum not exceeding the value of the stock so taken or driven away, nor less than fifty dollars; *provided*, that nothing herein contained shall be so construed as to release the owner or owners of said property from the amount of any lien there may be due thereon under and by virtue of this Act.

Proviso.

(1) STATUTORY LIEN FOR KEEPING ANIMALS LOST BY SURRENDER OF POSSESSION.—Where a stable keeper boarded a team of horses, but allowed them every day to be driven away to work, and on one occasion after being so driven away they were not returned: *Held*, that though he might, under the statute (Stats. 1866, p. 65), have retained possession of the horses and insisted upon his lien, yet, having allowed them to be driven away, he relinquished possession and thereby lost his right of lien.—Cardinal v. Edwards, 5 Nev., p. 36.

FIXING FUTURE TIME OF PAYMENT DESTROYS LIEN.—The fixing of a future time of payment for the keeping or boarding of animals, such as an agreement to pay on the first of each month, destroys the lien contemplated by the statue of eighteen hundred and sixty-six. (Stats. 1866, p. 65.)—Id.

CHAPTER XXI.

OF HOTELS AND LODGING HOUSES.

SECTION 147. Proprietor of hotel may sell baggage.
148. Proceeds, how disposed of.
149. Sales, how made; proviso.
150. Baggage heretofore left may be sold under provisions of this Act; proviso.

An Act for the protection of proprietors of hotels and lodging houses.

[Approved March 2, 1867, p. 69.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Proprietor of hotel may sell baggage.

147. SECTION 1. Whenever any person shall leave a hotel or lodging house, indebted to the proprietor or proprietors thereof, and shall remain absent for the period of six months, it shall be lawful for such proprietor or proprietors to sell or cause to be sold, at public auction, any baggage or property of such person so indebted, or so much thereof as may be necessary to pay such indebtedness, expenses, and charges of sale, which may have been left at such hotel or lodging house by such person.

Proceeds, how disposed of.

148. SEC. 2. All baggage or property, of whatever description, left at a hotel or lodging house for the period of twelve months, may be sold at public auction by the proprietor or proprietors thereof, and the proceeds arising from such sale, after deducting the expenses and charges of sale and storage, shall be paid over to the County Treasurer of the county in which such baggage or property is left, to be held by him for the period of six months for the benefit of the owner thereof, at which time, if the same is not paid to the owner, or some person legally entitled to the same, it shall be transferred to the School Fund of the county.

Sales, how made.

Proviso.

149. SEC. 3. All sales made under the preceding sections of this Act shall be made by a licensed auctioneer, or by some Constable of the township in which such baggage or property may be left; *provided*, that no sale shall be valid unless a notice of such sale shall be posted up in three public places in such township for the period of twenty days immediately preceding the day of sale, giving a particular description of the property to be sold, the time and place of such sale, the name of the hotel or lodging house at which such baggage or property may be left, the names of the owner or owners of such baggage or property, when known, and signed by such auctioneer or Constable.

Baggage heretofore left may be sold under provisions of this Act.

150. SEC. 4. It shall be lawful for the proprietor or proprietors of any hotel or lodging house, at which any baggage

or property may have heretofore been left, to cause the same to be sold under the provisions of this Act; *provided*, that for the purposes of such sale, such baggage or property shall be considered as left at such hotel or lodging house at the date of the passage of this Act. **Proviso.**

CHAPTER XXII.

OF THE RIGHTS OF HUSBAND AND WIFE.

SECTION 151. Separate property of wife; separate property of husband.
152. Community property.
153. Inventory recorded; supplemental inventory.
154. Filing to be notice.
155. Failure to file, effect of.
156. Husband to control community property.
157. No estate in dower or by courtesy.
158. Tenants in common.
159. Wife to control her separate property.
160. Upon death of wife the community property to go to husband, except in case of abandonment.
161. Community property upon death of husband; how disposed of; community property subject to payment of debts.
162. Division of property in case of divorce.
163. Earnings of wife.
164. Earnings of wife and minor children, etc.
165. Earnings of wife deemed gift, when.
166. Debts of wife.
167. Debts of husband.
168. Separate property.
169. Contract between husband and wife, etc.
170. Contract of separation.
171. Consideration of.
172. Necessaries furnished wife, husband bound for.
173. Husband not liable, when.
174. Support of husband by wife, when required.
175. Wife may sue and be sued.
176. Property rights governed by this Act; exception.
177. Marriage contracts.
178. Marriage contract to be recorded.
179. Record of contract.
180. Contract not valid, when.
181. Marriage contract of minor.
182. Acknowledgment of wife to convey realty.
183. Power of attorney.
184. Acknowledgment, effect of.
185. Acts repealed.

An Act defining the rights of husband and wife.

[Approved March 10, 1873, p. 193.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Separate property of wife. Separate property of husband.

151. SECTION 1. All property of the wife, owned by her before marriage, and that acquired by her afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property; and all property of the husband, owned by him before marriage, and that acquired by him afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

Community property

152. SEC. 2. All other property acquired, after marriage, by either husband or wife, or both, except as provided in sections fourteen and fifteen in this Act, is community property.

Inventory recorded. Supplemental inventory.

153. SEC. 3. A full and complete inventory of the separate property of the wife, exclusive of money in specie, must be made out and signed by her, acknowledged or proved in the manner required for the acknowledgment or proof of a conveyance of real property by an unmarried woman, and shall be recorded, if she be a resident of this State, in the office of the Recorder of the county in which she resides; and if there be included in such inventory any real estate lying in any other county, also in the office of the Recorder of such other county, or if she be not a resident of this State, then in the office of the Recorder of each county wherein any portion of the property, real or personal, is situated, located, or used; and from time to time thereafter, a further and supplemental inventory shall be made out, signed, acknowledged, or proved and recorded in like manner, of all other separate property afterwards acquired by the wife, excepting money whilst in specie and unconverted, and the rents, issues, and profits of her separate property, included in the original or any subsequent inventory, if the same be money, so long as it shall remain in specie and unconverted.

Filing to be notice.

154. SEC. 4. When the wife is a resident of this State, the filing for record of the inventory of her separate property in the office of the Recorder of the county in which she resides is notice of her title to the same, except as to any real estate situate in another county; and as to such real estate, the filing for record of the inventory thereof, in the office of the Recorder of the county wherein the same is situate, is notice of her title thereto. When the wife is not a resident of this State, the filing for record of the inventory of her separate property in the office of the Recorder of the county wherein any portion of such property, real or personal, included in the inventory is situate, located, or used, is notice of her title as to all such property situate, located, or used in such county.

Failure to file, effect of.

155. SEC. 5. When the wife is a resident of this State, the failure to file for record an inventory of her separate property in the office of the Recorder of the county in which she resides, or the omission from the inventory, filed for record in such office, of any part of such property, except as to real estate situate

Same.

in another county, is prima facie evidence, as between the wife and purchasers in good faith and for a valuable consideration from the husband, that the property of which no inventory has been so filed, or which has been omitted from the inventory, is not the separate property of the wife; and as to any real estate situate in another county, the failure to file for record an inventory thereof in the office of the Recorder of the county wherein the same is situate, or the omission from the inventory filed for record in such office, of any part of such real estate, is prima facie evidence, as between the wife and such purchasers as aforesaid, that such real estate of which no inventory has been so filed, or which has been omitted from the inventory, is not her separate property. When the wife is not a resident of this State, the failure to file for record an inventory of her separate property in the office of the Recorder of the county wherein any portion of such property is situate, located, or used, or the omission from the inventory filed in such office, of any part of such property, is, as to all such property situate, located, or used in that county, of which no inventory has been so filed, or which has been omitted from the inventory, prima facie evidence, as between the wife and such purchasers as aforesaid, that the same is not her separate property.

Husband to control community property.

156. SEC. 6. The husband has the entire management and control of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate. (1)

No estate in dower or by courtesy.

157. SEC. 7. No estate is allowed the husband as tenant by courtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

Tenants in common.

158. SEC. 8. A husband or wife may hold real or personal property as joint tenants, tenants in common, or as community property.

Wife to control her separate property.

159. SEC. 9. The wife may, without the consent of her husband, convey, charge, incumber, or otherwise in any manner dispose of her separate property.

Upon death of wife the community property to go to husband, except in case of abandonment.

160. SEC. 10. Upon the death of the wife the entire community property belongs, without administration, to the surviving husband, except that in case the husband shall have abandoned his wife and lived separate and apart from her without such cause as would have entitled him to a divorce, the half of the community property subject to the payment of its equal share of the debts chargeable to the estate owned in community by the husband and wife, is at her testamentary disposition in the same manner as her separate property, and in the absence of such disposition goes to her descendants equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, goes to her other heirs at law, exclusive of her husband.

Community property, upon death of husband.

161. SEC. 11. Upon the death of the husband, one half of the community property goes to the surviving wife and the other half is subject to the testamentary disposition of the husband; and in the absence of such disposition, goes to his descendants

How disposed of. equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration. Community property subject to payment of debts.

Division of property in case of divorce. 162. SEC. 12. In case of the dissolution of the marriage by decree of any Court of competent jurisdiction, the community property must be equally divided between the parties, and the Court granting the decree must make such order for the division of the community property, or the sale and equal distribution of the proceeds thereof, as the nature of the case may require; *provided*, that when the decree of divorce is rendered on the ground of adultery or extreme cruelty, the party found guilty thereof is only entitled to such portion of the community property as the Court granting the decree may in its discretion, from the facts in the case, deem just and allow; and such allowance shall be subject to revision on appeal in all respects, including the exercise of discretion, by the Court below.

Earnings of wife. 163. SEC. 13. The earnings of the wife are not liable for the debts of the husband.

Earnings of wife and minor children, etc. 164. SEC. 14. The earnings and accumulations of the wife and of her minor children, living with her, or in her custody, while she is living separate from her husband, are the separate property of the wife.

Earnings of wife deemed gift, when. 165. SEC. 15. When the husband has allowed the wife to appropriate to her own use her earnings, the same, with the issues and profits thereof, is deemed a gift from him to her, and is, with such issues and profits, her separate property.

Debts of wife. 166. SEC. 16. The separate property of the husband is not liable for the debts of the wife, contracted before the marriage.

Debts of husband. 167. SEC. 17. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

Separate property. 168. SEC. 18. Except as mentioned in the next section, neither husband nor wife has any interest in the property of the other.

Contract between husband and wife, etc. 169. SEC. 19. Either husband or wife may enter into any contract, engagement, or transaction with the other, or with any other person, respecting property, which either might enter into if unmarried, subject in any contract, engagement, or transaction between themselves, to the general rules which control the actions of persons occupying relations of confidence and trust towards each other.

Contract of separation. 170. SEC. 20. A husband and wife cannot by any contract with each other alter their legal relations, except as to property, and except that they may agree to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

Consideration of. 171. SEC. 21. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

Necessaries furnished wife, husband bound for.

172. SEC. 22. If the husband neglects to make adequate provision for the support of his wife, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

Husband not liable, when.

173. SEC. 23. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him.

Support of husband by wife, when required.

174. SEC. 24. The wife must support the husband out of her separate property when he has no separate property, and they have no community property, and he from infirmity is not able or competent to support himself.

Wife may sue and be sued.

175. SEC. 25. When the wife is living separate and apart from her husband she may sue and be sued alone.

Property rights, etc.

176. SEC. 26. The property rights of husband and wife are governed by this Act, unless there is a marriage contract or settlement containing stipulations contrary thereto.

Marriage contracts.

177. SEC. 27. All marriage contracts or settlements must be in writing, and executed and acknowledged or proved in like manner as a conveyance of land is required to be executed and acknowledged or proved.

Marriage contracts to be recorded.

178. SEC. 28. When such marriage contract or settlement is acknowledged or proved it must be recorded in the office of the Recorder of every county in which any real estate may be situated which is conveyed or affected by such contract.

Record of contract.

179. SEC. 29. When such marriage contract or settlement is deposited in the Recorder's office for record it shall, as to all property affected thereby in the county where the same is deposited, impart full notice to all persons of the contents thereof.

Contract not valid, when.

180. SEC. 30. No such marriage contract or settlement shall be valid as to any real estate, or affect the same, except as between the parties thereto, until it shall be deposited for record with the Recorder of the county in which such real estate is situate.

Marriage contract of minor.

181. SEC. 31. A minor, capable of contracting marriage, may make a valid marriage contract or settlement.

Acknowledgment of wife to convey realty.

182. SEC. 32. No estate in the real property a married woman possesses is affected by any conveyance or other instrument, except a will purporting to be executed or acknowledged by her, unless the same be acknowledged by her in the manner that conveyances by married women are required to be acknowledged.

Power of attorney.

183. SEC. 33. A power of attorney of a married woman, authorizing the execution of an instrument conveying or affecting her real property, shall be acknowledged as above mentioned.

Acknowledgment, effect of.

184. SEC. 34. A conveyance or other instrument affecting or relating to real estate, except a will made by a married woman, has no validity until acknowledged as above provided; but when so acknowledged has the same effect as if she were unmarried.

Acts repealed.

185. SEC. 35. An Act entitled "An Act defining the rights of husband and wife," approved March seventh, eighteen hundred and sixty-five, and all other Acts, and parts of Acts, in conflict with this Act, are hereby repealed; *provided*, that no rights

already vested, or any proceeding already taken, shall be affected by anything in this Act contained.

(1) CHOSES IN ACTION BELONGING TO HUSBAND AND WIFE. Under the provision of the statute relating to husband and wife (Stats. 1864–5, p. 240), the husband, for the purpose of bringing suits upon choses in action which are common property, and so far as the disposition of such property is concerned, is the sole owner, and he alone is the proper party to bring actions upon them.—Crow vs. Van Sickle, 6 Nev., 146.

CHAPTER XXIII.

OF THE EXEMPTION OF HOMESTEADS.

SECTION 186. Exempt from execution.
187. Exemption not to extend to liens, etc.; proviso; abandonment.
188. Appraisement when value exceeds five thousand dollars; excess to be sold; entire premises to be sold, when; proviso.
189. Homestead to be set apart, when; proviso.
190. How to convey when wife is insane.
191. Court to make special order.
192. May appeal.
193. Property not exempt from sale for taxes.
194. Gold coin.

An Act to exempt the homestead and other property from forced sale in certain cases.

[Approved March 6, 1865, p. 225.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Exempt from execution.

186. SECTION 1. The homestead, consisting of a quantity of land, together with the dwelling house thereon, and its appurtenances, not exceeding in value the sum of five thousand dollars, to be selected by the husband and wife, or either of them, or other head of the family, shall not be subject to forced sale on execution, or any final process from any Court, for any debt or liability contracted or incurred after November thirteenth, in the year of our Lord one thousand eight hundred and sixty-one. Said selection shall be made by either the husband or wife, or both of them, or other head of a family, declaring their intention, in writing, to claim the same as a homestead. Said declaration shall state that they, or either of them, are married; or if not married, that he or she is the head of a family; that they, or either of them, as the case may be, are at the

time of making such declaration residing with their family or with the persons under their care and maintenance on the premises, particularly describing said premises. and that it is their intention to use and claim the same as a homestead, which declaration shall be signed by the party making the same, and acknowledged and recorded as conveyances affecting real estate are required to be acknowledged and recorded, and from and after the filing for record of said declaration, the husband and wife shall be deemed to hold said homestead as joint tenants. (1)

Exemption not to extend to liens, etc.

Proviso.

Abandonment.

187. SEC. 2. Such exemption shall not extend to any mechanic's, laborer's, or vendor's lien lawfully obtained; but no mortgage or alienation of any kind, made for the purpose of securing a loan or indebtedness upon the homestead property, shall be valid for any purpose whatsoever; *provided*, that a mortgage or alienation to secure the purchase money, or pay the purchase money, shall be valid if the signature of the wife be obtained to the same, and acknowledged by her separately and apart from her husband; nor shall said homestead property be deemed to be abandoned without a declaration thereof in writing, signed and acknowledged by both husband and wife, or other head of a family, and recorded in the same office and in the same manner as the declaration of claim to the same is required to be recorded, and the acknowledgment of the wife to such declaration of abandonment shall be taken separately and apart from her husband; *provided*, that if the wife be not a resident of this State, her signature and the acknowledgment thereof shall not be necessary to the validity of any mortgage or alienation of said homestead before it becomes the homestead of the debtor.

Appraisement when value exceeds five thousand dollars.

Excess to be sold.

Entire premises to be sold, when.

Proviso.

188. SEC. 3. Whenever execution has been issued against the property of a party claiming said property as a homestead, and the creditor in such judgment shall make oath before the Judge of the District Court of the county in which such premises are situated, that the cash value of such premises exceeds, to the best of the creditor's information and belief, the sum of five thousand dollars, it shall be the duty of such Judge, upon notice to the debtor, to appoint three disinterested and competent persons as appraisers to estimate and report as to the value of such premises, and if the same exceeds said sum, whether they can be divided so as to leave the premises amounting to the homestead exemption without material injury. If it appear, upon such report, to the satisfaction of the Judge, that the premises can be thus divided, he shall order the excess to be sold under the execution. If it appear that the premises cannot be thus divided, and the value thereof exceeds the exemption allowed by this Act, he shall order the entire premises to be sold, and out of the proceeds the sum of five thousand dollars to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution; *provided*, that no bid shall be received by the officer making the sale under five thousand dollars; *and provided, further*, that when the execution is against the husband, whose wife is living, the Judge may, in his discretion, direct the five thousand dollars to be deposited in Court, to be paid out only upon the joint receipt of the hus-

band and wife, and it shall possess all the protection against legal process and voluntary disposition of the husband as were the original homestead premises.

Homestead to be set apart, when. 189. SEC. 4. The homestead and other property exempt from forced sale shall, upon the death of either husband or wife, be set apart by the Court for the benefit of the surviving husband or wife, and his or her legitimate children; and in the event of there being no survivor or legitimate children of either husband or wife, then the property shall be subject to the payment of their debts; *provided*, that the exemption provided for in this Act shall not extend to unmarried persons, except when they have the care and maintenance of minor brothers or sisters, or both, or brothers' or sisters' minor children, or a father or mother, or both, or grandparents or unmarried sisters living in the house with them. Proviso.

How to convey when wife is insane. 190. SEC. 5. If the wife of any owner of a homestead shall be insane, and such owner shall desire to convey such homestead, or any interest therein, he may petition the District Court in which such homestead may be situated for license to convey the same, and such Court, upon reasonable and not less than twenty days notice of such petition to the kindred of such insane wife, residing in this State (which notice may be personal or by publication in some newspaper in the county, or directed by the Court). may hear and determine such petition, and may license such owner to convey such homestead, or any interest therein, by his sole deed; which license shall be recorded in the office where such homestead is recorded, and thereupon such sole deed shall have the same operation as if such wife had been sane and joined in such deed.

Court to make special order. 191. SEC. 6. On granting such license, such Court may make such special order as to the investment or disposition of the funds derived from conveyance, as a Court of chancery could do in the case of the funds of married women.

May appeal. 192. SEC. 7. On the hearing of such petition for license, any of such kindred may appear and be heard in the premises, and may appeal from any order made on the subject in the same manner provided for other appeals from decrees of the District Court.

Property not exempt from sale for taxes. 193. SEC. 8. Nothing in this Act shall be so construed as exempting any real or personal property from sale for taxes.

Gold coin. 194. SEC. 9. In all cases wherein an amount or sum is stated in this Act, the same shall be held and regarded as so much money in gold coin.

(1) Erecting a house and residing therein with one's family dedicates that building as a homestead. It makes no difference that the house erected is large or suitable for a lodging house, and used for such purpose.—Goldman v. Clark, 1 Nev., p. 607.

Being once dedicated as a homestead, it can only be divested of that character by the joint deed of husband and wife. A married woman can only convey by following prescribed forms. No conveyance by the husband alone, and no lease made by him, could divest the property of its character as a homestead.—Id.

The statute which requires the owner of the property to make his claim of homestead is merely directory, and if the husband does not make such claim and point out the homestead property to the officers when it is levied on, the wife may do so.—Id.

The Constitution and law has given the wife certain rights; the failure of the Legislature to point out the particular manner in which she shall assert them is immaterial. She may come into a Court of equity according to the established forms and usages of that Court, and obtain any equitable relief to which she is entitled.—Id.

The law exempts from forced sale a tract of land on which the homestead is located to the extent of five thousand dollars in value.—Clark vs. Shannon, 1 Nev., p. 568.

It does not limit or prescribe the other uses to which the land may be put, if one use it for a homestead.—Id.

It makes no difference that the land is divided by imaginary lines. The entire tract of land, if not exceeding five thousand dollars in value, is protected.—Id.

When the homestead tract of land does not exceed five thousand dollars in value, the husband cannot execute a mortgage on any portion thereof without the concurrence of the wife.—Id.

Query: Can the husband alone, without the wife, set up the defense of homestead? Certainly; the proper practice is to make the wife a defendant.—Id.

Does the constitutional provision for protecting "a homestead as provided by law," absolutely protect a homestead of such dimensions and value as the law then in existence, or thereafter to be made, might prescribe; or does it only require the Legislature to pass a law protecting a homestead upon such terms and conditions as the law may impose—*Quere?*—Hawthorn and Wife v. Smith, 3 Nev., p. 182.

It is clearly the intention of the Constitution to protect the debtor's homestead from forced sale. It is equally clear that the Legislature intended to effectuate that intention. This being the policy of the law, creditors will not be allowed to defeat its object unless the statute clearly gives that right, or clearly points out the contingency upon the transpiring of which the debtor will lose his exemption.—Id.

Property which possesses the characteristics of a homestead, may be selected and recorded as such at any time before actual sale under execution. The levy of an attachment will not prevent such selection.—Id.

MORTGAGE OF HOMESTEAD BY HUSBAND AND WIFE.—The Act of March 6th, 1865 (Stats. 1864–5, p. 225), to exempt the homestead and other property from forced sale in certain cases, in so far as it provides that no valid mortgage, for the purpose of securing a loan or indebtedness, can be made by husband and wife upon their homestead, is unconstitutional.—Dunker v. Chedic, 4 Nev., p. 378.

CONSTITUTIONAL CONSTRUCTION AS TO HOMESTEAD MORT-

GAGES.—The Constitution (Art. IV, Sec. 30), which prescribes that the homestead "shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife * * * *provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife," etc., expressly prohibits the Legislature from exempting the homestead from forced sale upon a lien created by husband and wife for a loan or indebtedness.—Id.

NO HOMESTEAD AS AGAINST LIEN FOR PURCHASE MONEY. There can be no homestead right acquired in property as against the purchase money, unless the lien therefor, whether created by mortgage or existing by way of vendor's lien, has been relieved in some lawful way.—Hopper v. Parkinson, 5 Nev., p. 223.

FORECLOSURE OF MORTGAGE FOR PURCHASE MONEY.—In a foreclosure suit on a mortgage given by a husband to secure the purchase money of land, and made contemporaneously with the deed of the land to him, the wife, being admitted to defend, set up a homestead right: *Held*, that neither husband nor wife could acquire any homestead right as against the mortgage debt.—Ib.

CHAPTER XXIV.

OF MARRIAGE AND DIVORCE.

SECTION 195. Marriage a civil contract.
196. Who may be joined in marriage; proviso.
197. Who may join persons as husband and wife; ministers to be licensed; license to be produced to Clerk, etc.
198. License to be obtained from County Clerk; when persons are under age; Clerk's fee.
199. Solemnization.
200. Marriage certificate.
201. Record of; form of certificate.
202. Book of Records; fee.
203. Certificate of Recorder.
204. False certificate.
205. Persons unauthorized performing ceremony.
206. When not valid.
207. Presumptive evidence of.
208. Illegitimate children.
209. Fines; application of.
210. Friends or Quakers.

DIVORCE AND ALIMONY.

SECTION 211. When void without decree of divorce.
212. Parties incapable of assenting; when void.
213. When not to be adjudged a nullity.
214. Parties may file complaint.
215. For what causes divorce may be granted.
216. Non-resident defendants to be notified.
217. Disposition of children of divorced parents.
218. Disposition of property for benefit of children.
219. Testimony and pleadings.
220. Wife's proportion of property; Court may require husband to pay sums to carry on suit; specific property may be ordered applied.
221. Effect of divorce; female's name may be changed.
222. Issue of fact.

An Act relating to marriage and divorce.

[Approved November 28, 1861, p. 94.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

195. SECTION 1. That marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential. **Marriage a civil contract.**

196. SEC. 2. Male persons of the age of eighteen years, and female persons of the age of sixteen years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage; *provided always*, that male persons under the age of twenty-one years, and female persons under the age of eighteen years, shall first obtain the consent of their fathers, respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians; *and, provided further*, that nothing in this Act shall be construed so as to make the issue of any marriage illegitimate if the person or persons shall not be of lawful age. (As amended March 5, Stats. 1867, p. 88.) (1) **Who may be joined in marriage.** **Proviso.**

(1) CONSTRUCTION OF MARRIAGE STATUTE.—The proviso in the marriage Act to the effect that the issue of a marriage of persons not of lawful age shall not be illegitimate (Stats. 1867, p. 87), refers to the issue of marriages of persons under eighteen years in males and under sixteen in females.—Fitzpatrick v. Fitzpatrick, 6 Nev., p. 63.

MARRIAGE STATUTE—MARRIAGEABLE AGE.—The proviso in the marriage Act against the illegitimacy of the issue of a marriage of persons not of lawful age (Stats. 1867, p. 88), does not indicate any intention on the part of the Legislature to render marriages of males between eighteen and twenty-one, or of females between sixteen and eighteen, void on account of being made without the consent of parents or guardians.—Id.

Lawful Age of Marriage, What.—The lawful age of marriage in this State is eighteen years in males and sixteen years in females; and marriages made by persons of such age are valid and binding, though made without consent of parents or guardians.—Id.

Divorce—Want of Legal Age.—Where a female of the age of sixteen years entered into a marriage "without force or fraud, and with her full and free consent:" *Held*, that there was no ground of divorce on account of want of legal age, though there was no consent by any parent or guardian.—Id.

Sec. 3. (Repealed March 5, Stats. 1867, p. 89.)

Who may join persons as husband and wife.

197. Sec. 4. It shall be lawful for any ordained minister of any religious society or congregation within this State who has or hereafter may obtain a license for that purpose as hereinafter provided, or for any Judge of a District Court in his district, or Justice of the Peace in his county, to join together as husband and wife all persons not prohibited by this Act.

Ministers to be licensed.

Any minister of the gospel, upon producing to the District Court of any county or district within this State, credentials of his being a regularly ordained minister of any religious society or congregation, shall be entitled to receive from said Court a license authorizing him to solemnize marriages within this State so long as he shall continue a regular minister in such society or congregation.

License to be produced to Clerk, etc.

It shall be the duty of any minister licensed to solemnize marriages as aforesaid, to produce to the County Clerk in every county in which he shall solemnize any marriage, his license so obtained; and the said Clerk shall thereupon enter the name of such minister upon record as a minister of the gospel duly authorized to solemnize marriages within this State, and shall note the Court from which such license issued, for which service no charge shall be made by such Clerk. The record so made, or the certificate thereof by the said Clerk under the seal of his office, shall be good evidence that said minister was duly authorized to solemnize marriages. (As amended March 5, Stats. 1867, p. 89.)

License to be obtained from County Clerk.

When persons are under age.

198. Sec. 5. Previous to persons being joined in marriage, a license shall be obtained for that purpose from the County Clerk of the county where the persons, or one of them, intending to be married, reside (or in case the persons intending to be married do not reside in this State, then from any County Clerk in the State). The County Clerk may inquire of the party applying for marriage license upon oath or affirmation relative to the legality of such contemplated marriage; and if the Clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and if any of the persons intending to marry shall be under age, and shall not have been previously married, the consent of the parent or guardian shall be personally given before the Clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said Clerk and make oath that he saw the parent or guardian, whose name is annexed to such certificate subscribed, or heard him or her acknowledge the same, whereupon the Clerk is authorized to issue and sign such

license, affixing thereto the seal of the county. The Clerk shall be entitled to receive as his fee for issuing the license the sum of one dollar, and if any Clerk shall in any other manner issue, or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars to and for the use of the party aggrieved. (As amended March 5, Stats. 1867, p. 89.) Clerk's fee.

199. SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare in the presence of the Judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony. Solemnization.

200. SEC. 7. When a marriage shall have been solemnized, the person solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residence of the parties, and of at least two witnesses present, and the time and place of such marriage. (As amended March 5, Stats. 1867, p. 89.) Marriage certificate.

201. SEC. 8. Every person solemnizing a marriage shall make a record thereof, and, within three months after such marriage, shall make and deliver to the Recorder of Deeds of the county where the marriage took place, a certificate under his hand, containing the particulars mentioned in the preceding section. The certificate may be in the following form: Record of.

TERRITORY OF NEVADA, }
County of ————. } ss.

This is to certify that the undersigned, a Justice of the Peace of said county (minister of the gospel, or Judge, etc., as the case may be), did, on the —— day of ———, A. D. 18—, join in lawful wedlock A. B. and C. D., with their mutual consent, in presence of E. F. and G. H., witnesses. Form of certificate.

J. P., Justice of the Peace.

202. SEC. 9. All such certificates shall be filed and recorded by the said Recorder in a book to be kept by him for that purpose; and shall receive a fee of one dollar from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage. Book of Records. Fee.

203. SEC. 10. Every person solemnizing a marriage, who shall neglect to make and deliver to the Recorder a certificate thereof within the time above specified, shall forfeit for such neglect a sum not less than twenty nor more than fifty dollars; and every Recorder who shall neglect to record such certificate so delivered, shall forfeit the like penalty. Certificate of Recorder

204. SEC. 11. If any person shall willfully make any false certificate of any marriage, or pretended marriage, he shall forfeit for every such offense a sum not exceeding five hundred dollars, or may be imprisoned in the Territorial Prison not exceeding one year, or by both such fine and imprisonment. False certificate.

205. SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall on conviction be fined in any sum not exceeding five Persons unauthorized performing ceremony.

hundred dollars, and be imprisoned in the Territorial Prison until such fine is paid.

When not valid. 206. SEC. 13. No marriage solemnized before any person professing to be a Judge, Justice, or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Presumptive evidence of. 207. SEC. 14. The original certificate and records of marriage made by the Judge, Justice, or minister, as prescribed in this Act, and the record thereof by the Recorder of the county, or a copy of such record duly certified by such Recorder, shall be received in all Courts and places as presumptive evidence of the fact of such marriage.

Illegitimate children. 208. SEC. 15. Illegitimate children shall become legitimatized by the subsequent marriage of their parents with each other.

Fines. 209. SEC. 16. All fines and forfeitures arising in consequence of a breach of this Act shall be paid into the County Treasury for the use of common schools; and in all cases, when Application of. a violation of the provisions of this Act is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the County Treasurer.

Friends or Quakers. 210. SEC. 17. All marriages solemnized among the people called "Friends" or "Quakers," in the forms heretofore practiced and in use in their meetings, shall be good and valid.

DIVORCE AND ALIMONY.

When void without decree of divorce. 211. SEC. 18. All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this Territory, be absolutely void without any decree of divorce or other legal proceedings.

Parties incapable of assenting 212. SEC. 19. When either of the parties to a marriage for want of age or understanding shall be incapable of assenting thereto, or when fraud shall have been proved, and there shall When void. have been no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity shall be declared by a Court of competent authority.

When not to be adjudged a nullity. 213. SEC. 20. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under age of legal consent, if it shall appear that the parties, after they attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

Parties may file complaint. 214. SEC. 21. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the Probate Court of the county where the parties, or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said Court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

215. SEC. 22. Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the Probate Court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside, or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided for six months before suit be brought, for the following causes: First—Impotency at the time of the marriage, continuing to the time of the divorce. Second—Adultery since the marriage, remaining unforgiven. Third—Willful desertion of either party by the other, for the space of two years. Fourth—Conviction of felony, or infamous crime. Fifth—Habitual, gross drunkenness, contracted since marriage, of either party, which shall incapacitate such party from contributing his or her share to the support of the family. Sixth—Extreme cruelty in either party. Seventh—Neglect of the husband, for the period of two years, to provide the common necessaries of life, when such neglect is not the result of poverty, on the part of the husband, which he could not avoid by ordinary industry. (1)

For what causes divorce may be granted.

(1) EXTREME CRUELTY.—The acts or character of treatment which will amount to extreme cruelty sufficient to constitute a ground of divorce, must in a great measure depend on the character of the respective parties, and the peculiar circumstances of each case.—Reed v. Reed, 4 Nev. 395.

EXTREME CRUELTY WITHOUT PERSONAL VIOLENCE.—There may be extreme cruelty without the slightest violence; if it appear probable that the life of one of the parties will be rendered miserable by any character of misconduct on the part of the other, although no personal violence be apprehended, a separation should be decreed.—Id.

SINGLE ACTS OF VIOLENCE.—A mere act of violence, where there is no apprehension of its repetition, and which is the result of rashness rather than malignity, does not furnish a ground of divorce on the ground of extreme cruelty, because this relief is not granted to punish the party guilty of misconduct, but to relieve the other party from future suffering or violence.—Id.

PROVOCATION OF VIOLENCE.—A divorce will not be granted on the ground of extreme cruelty where it appears that the complaining party has willfully provoked the violence or misconduct complained of, unless such violence greatly exceeds the provocation.—Id.

216. SEC. 23. If the defendant is not a resident of the Territory, or cannot, for any cause, be personally summoned, the Court, or Judge, in vacation, may order notice of the pendency of the suit to be given in such manner, and during such time, as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and if no such order be made, it shall be sufficient to publish such notice in a

Non-resident defendants to be notified.

weekly newspaper, printed in, or nearest to, the county in which the suit is pending, three months in succession; and if the defendant fail to appear, and make defense, at the first term after such notice, or after thirty days' personal service of summons, the evidence may be heard, and the cause decided, at that term; or compulsory process may be had to obtain an appearance, or answer, if it be necessary to the disposition of property, or of children.

Disposition of children of divorced parents.

217. SEC. 24. The Court, in granting a divorce, shall make such disposition of, and provision for, the children, as shall appear most expedient under all the circumstances, and most for the present comfort and future well-being of such children; and when, at the commencement, or during the pendency, of the suit, it shall be made to appear to the Court, or to the Judge, in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been, or is likely to be, taken or detained from her, or that any child of either party, has been, or is likely to be taken, or removed, by, or at the instance of, the other party, out of the county, or concealed within the same, it shall be the duty of the Court, or of such Judge, in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced, and made effectual, by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of Courts, and to the circumstances of the case; *provided*, the Court, upon good cause shown, may change the custody of such minor children, if they should be satisfied that such change will be for the welfare of such children.

Disposition of property for benefit of children.

218. SEC. 25. In granting a divorce, the Court shall also make such disposition of the property of the parties, as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the children. And all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of or regulated by the order of the Court, shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if, after the filing of the petition, it shall be made to appear probable to the Court, or the Judge, in vacation, that either party is about to do any act that would defeat or render less effectual any order which the Court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children. (a)

Testimony and pleadings.

219. SEC. 26. The testimony of witnesses in suits for divorce, shall be given orally in Court, with the right to either party to take and use depositions, on the same terms and in the same

manner as in actions at law; and the proceedings, pleadings, and practice, shall conform to those at law, as nearly as conveniently may be, but all preliminary and final orders may be in such form as will best effect the object of this Act, and produce substantial justice. (b)

220. SEC. 27. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the Court may set apart such portion for her support, and the support of their children, as shall be deemed just and equitable. In any suit for divorce now pending, or which may hereafter be commenced, the Court or Judge may, in its discretion; upon application, of which due notice shall have been given to the husband or his attorney, at any time after the filing of the complaint, require the husband to pay such sums as may be necessary to enable the wife to carry on or defend such suit, and for her support and the support of the children of the parties during the pendency of such suit; and the Court or Judge may direct the application of specific property of the husband to such object, and may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing to the husband from any quarter, and may enforce all orders made in this behalf, as is provided in section twenty-four of this Act. (As amended January 18, Stats. 1865, p. 99.) (1) (c)

Wife's proportion of property.

Court may require husband to pay sums to carry on suit.

Specific property may be ordered applied.

221. SEC. 28. Whenever an order of divorce from the bonds of matrimony is granted in this Territory by the Court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties; and in all suits for a divorce brought by a female, if a divorce be granted, the Court may, for just and reasonable cause, change the name of such female, and shall, in its order, decree and appoint.

Effect of divorce.

Female's name may be changed

222. SEC. 29. Either party, on application to the Court, may be entitled, at such trial, to have the issue of fact involved in such case and presented by the pleadings, tried by a jury, in accordance with the general rules governing the trial of civil actions in the District Court.

Issue of fact.

(a) Division of property in case of divorce, Sec. 162.

(b) Court may order the trial to be private, Sec. 948.

(c) Passed notwithstanding the objections of the Governor.

An Act concerning judgments of divorce in the Probate Court of Storey County, Stats. 1862, p. 8, is repealed by Stats. 1865, p. 99.

Certain decrees of divorce made valid, see Sec. 995.

(1) Under the statute providing for the payment of alimony *pendente lite*, the Court cannot make an order for the payment of past expenses after the suit has been finally decided against the wife, although the motion was made before the decision of the case.—Wilde v. Wilde, 2 Nev., p. 306.

When the statute says an order may be made on due notice to the opposite side, it means the statutory written notice of five days, and it would not be proper to hear a motion and make the order until such notice had been given and the full five days expired.—Id.

When an allowance is made to a wife for expenses of procuring attendance of witnesses in one district, and the case is afterwards removed to another district where all the witnesses reside, it would be proper for the Judge of the latter district to review the allowance made, and modify it according to his views of the necessary costs in his district.—Sheckles v. Sheckles, 3 Nev., p. 404.

DISPOSITION OF COMMON PROPERTY ON DIVORCE.—In an action for divorce for extreme cruelty, where nothing is said in the pleading about the disposition of the common property, it is error to award it all to one of the parties.—Howe v. Howe, 4 Nev., p. 469.

REVERSAL OF DIVORCE DECREE IN PART.—Where the decree of divorce for extreme cruelty, in an action in which there was no averment in the pleadings as to the common property, awarded it all to the plaintiff: *Held*, that in so far as it purported to make disposition of or direction concerning such property, it should be reversed, and the cause remanded for amendment of the pleadings and for further proceedings.—Id.

CHAPTER XXV.

OF MARRIED WOMEN AS SOLE TRADERS.

SECTION 223. Right to transact business.
224. Applicants to give notice; proviso; notice; hearing of application; order; oath.
225. Copy of order to be recorded; rights and liabilities of sole traders.
226. Maintenance of children.
227. Husband not responsible for debts, etc.

An Act to authorize married women to transact business in their own names as sole traders.

[Approved February 6, 1867, p. 49.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Right to transact business.

223. SECTION 1. Married women shall have the right to carry on and transact business under their own name, and on their own account, by complying with the regulations prescribed in this Act.

224. SEC. 2. Any married woman residing within this State, desirous to avail herself of the benefit of this Act, shall give notice thereof, by advertising in some public newspaper published in the county in which she has resided, for four successive weeks preceding such application; *provided*, if no newspaper be published in said county, said publication shall be made by posting advertisements in three of the most public places in said county, four weeks prior to the day of application. Such notice shall set forth that it is her intention to make application to the District Court of said county, on the day therein named, for an order of said Court permitting her to carry on business in her own name and on her own account; and it shall specially set forth the nature of the business to be carried on. On the day named in the notice, or at such future time as the Court may appoint, on filing proof of publication, the Court shall proceed to examine the applicant, on oath, as to the reasons which induce her to make the application; and if it appear to the Court that a proper case exists, it shall make an order, which shall be entered on the minutes, that the applicant be authorized and empowered to carry on, in her own name and on her own account, the business, trade, profession, or art named in the notice; but the insolvency of the husband, apart from other causes tending to prevent his supporting his family, shall not be deemed to be sufficient cause for granting this application. Any creditor of the husband may oppose such application, and may show that it is made for the purpose of defrauding such creditor, and preventing him from collecting his debt, or will occasion such result; and if it shall so appear to the Court, the application shall be denied. On the hearing, witnesses may be examined on behalf of either party. Before making the order, the Court or Judge shall administer to the applicant the following oath: **Applicants to give notice.** **Proviso.** **Notice.** **Hearing of application** **Order.**

"I, A. B., do, in the presence of Almighty God, truly and solemnly swear, that this application is made in good faith, for the purpose of enabling me to support myself and my children (if the applicant have minor children), and not with any view to defraud, delay, or hinder any creditor or creditors of my husband; and that of the moneys so to be used in said business, not more than five hundred dollars has come, either directly or indirectly, from my husband. So help me God." **Oath.**

A certified copy of such order, with the said oath indorsed thereon, shall be recorded in the office of the Recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

225. SEC. 3. After the order has been duly made and recorded, as provided in the second section of this Act, the person therein named shall be entitled to carry on such business in her own name, and the property, revenues, moneys, and credits, so invested, shall belong exclusively to such married woman, and shall not be liable for any debts of her husband; and said married woman shall be allowed all the privileges, and **Copy of order to be recorded.**

Rights and liabilities of sole traders.

be liable to all legal process, now or hereafter provided by law, against debtors and creditors, and may sue and be sued alone, without being joined with her husband. But nothing contained in this Act shall be deemed to authorize a married woman to carry on business in her own name when the same is managed or superintended by her husband.

Maintenance of children.

226. SEC. 4. Any married woman availing herself of the benefit of this Act, shall be responsible for the maintenance of her children.

Husband not responsible for debts, etc.

227. SEC. 5. The husband of the wife availing herself of the benefit of this Act shall not be responsible for any debts contracted by her in the course of the said business, without the special consent of her husband, given in writing; nor shall his separate property be taken on execution for any debts contracted by her.

CHAPTER XXVI.

OF CONVEYANCES; PROOF OF ACKNOWLEDGMENTS AND MARKS AND SIGNATURES; MINING RECORDS, AND UNSTAMPED INSTRUMENTS.

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232. Acknowledgments heretofore taken, record valid.
233. Certificate of acknowledgment.
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237. Form of, when grantor is unknown.
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258. Evidence of, when lost.
259. Evidence may be rebutted.
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290. Same.
291. Auction sale, note of, defined.
292. Sale of goods when evidence of fraud.
293. Creditor defined.
294. Mortgages of personal property, when valid; proviso; affidavit of mortgagor and mortgagee; possession of crop.
295. Bottomry respondentia, etc.
296. Agent to subscribe.
297. Contracts to delay or defraud creditors void.
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299. Instruments, when void against heirs.
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301. Not to affect purchaser for value.
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319. Marks instead of signatures.

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320. Mining records to impart notice.
321. Copies may be read in evidence.

UNSTAMPED INSTRUMENTS.

322. Instruments not stamped admissible in evidence.

An Act concerning conveyances.

[Approved November 5, 1861, p. 11.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Conveyance by deed.

228. SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded, as hereinafter directed. (1)

(1) A deed of conveyance, executed and delivered, carries the absolute legal title to the grantee, and if more land is by mistake conveyed than was intended by the grantor, it carries

the legal title to that portion not intended to be conveyed, as well as to that which it was the intention to convey, leaving, however, an equitable interest to that not intended to be conveyed in the grantor.—Ruhling v. Hackett, 1 Nev., p. 360.

Courts of equity have the power to correct mistakes in deeds and other executed instruments, so as to make them conform to the real intentions of the parties, even to the extent of making a deed include more land than is embraced in it, where it was omitted by mistake, fraud, or surprise.

The assignment of a mortgage usually carries with it all the equitable rights of the mortgagee growing out of it. The assignment of the mortgage is itself but the transfer of an equitable right of action to the assignee. With respect to the reformation of a mortgage, the assignee stands in the same position as the mortgagee.—Id.

SUFFICIENCY OF SHERIFF'S DEED.—If the recitals of a Sheriff's deed are sufficient to show that he is acting in his official character and by due authority of law, it becomes a good deed upon being signed and delivered, without reference to acknowledgment.—Smith et al., Claimants, 4 Nev., p. 254.

ACKNOWLEDGMENT OF SHERIFF'S DEED.—The failure of an acknowledgment of a Sheriff's deed, which is otherwise sufficient to show that he acknowledged it as Sheriff, does not render it invalid, for the reason that the deed is good without acknowledgment.—Id.

EVIDENCE—DEEDS MADE PRIOR TO STATUTE OF CONVEYANCES.—A deed made prior to the Act of November 5th, 1861, concerning conveyances, but acknowledged as provided therein, is admissible in evidence, such acknowledgment being competent prima facie proof of its execution.—Sharon v. Davidson, 4 Nev., p. 416.

A DEED, ABSOLUTE ON ITS FACE, MAY BE SHOWN TO BE A MORTGAGE.—A deed, absolute on its face, if clearly shown to have been given as security for a loan, will be treated as a mortgage in equity, and a reconveyance decreed to the debtor upon payment of the debt.—Bingham v. Thompson, 4 Nev., p. 224.

PAROL EVIDENCE SHOWING A DEED A MORTGAGE NOT CONTRADICTING THE INSTRUMENT.—Parol evidence to show a deed, absolute on its face, to have been given as security for a loan, is not evidence contradicting the instrument, but evidence to create an equity superior to the deed.—Id.

PROOF TO SHOW A DEED A MORTGAGE SHOULD BE CLEAR. The proof necessary to show a deed, absolute on its face, to be a mortgage, should be clear, satisfactory, and convincing. A bare preponderance of evidence is not sufficient to defeat the natural effect of an instrument deliberately and freely executed. The presumption is that persons intend that which is the necessary and natural effect of an instrument voluntarily executed; and to overcome such presumption, the proof should be so cogent, weighty, and convincing as to leave no doubt upon the mind.—Id.

By married women.

229. SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

Acknowledgment of

230. SEC. 3. Every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided.

Acknowledgments, by whom taken.

231. SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate shall be taken by some one of the following officers: First—If acknowledged or proved within this State, by some Judge or Clerk of a Court having a seal, or some Notary Public or Justice of the Peace; *provided*, when the acknowledgment is taken before a Justice of the Peace in any other county than that in which the real estate is situated, the same shall be accompanied with the certificate of the Clerk of the District Court of such county, as to the official character of the Justice taking the proof or acknowledgment, and the authenticity of his signature. Second—If acknowledged or proved without this State, (a) and within the United States, by some Judge or Clerk of any Court of the United States, or of any State or Territory having a seal, or by any Commissioner appointed by the Govern~~ment~~or of this State for that purpose, or by a Justice of the Peace of any county in any State or Territory in the United States, accompanied with the certificate of the Clerk of a Court of record of the county having a seal, as to the official character of the Justice, and the authenticity of his signature. Third—If acknowledged or proved without the United States, by some Judge or Clerk of any Court of any State, Kingdom, or Empire having a seal, or by any Notary Public therein, or by any Minister, Commissioner, or Consul of the United States appointed to reside therein. [As amended March 11th, Stats. 1867, p. 103.] (1)

(See Sec. 313 Notary Public)

(a) For proof of acknowledgments taken without the State, but within the United States, see Act of February 13th (Stats. 1871, p. 54); Secs. 313, 314, post.

(1) ACKNOWLEDGMENTS BY COUNTY RECORDERS.—An acknowledgment of a certificate for the constructing and maintaining of a toll road under the Act of 1865 (Stats. 1865, p. 254), taken before a County Recorder, is sufficient.—Ford v. Hoover, 5 Nev., p. 141.

CONSTRUCTION OF STATUTES—"RECORDERS."—The Act of 1861 (Stats. 1861, p. 422), authorizing "Recorders," within their respective counties, to take acknowledgments, referred to County Recorders, and not to Judicial Recorders—officers not then known to the laws.—Id.

CONSTRUCTION OF STATUTES—POWER OF RECORDERS TO TAKE ACKNOWLEDGMENTS.—The fact that the Act of 1865 (Stats. 1864-5, p. 110, Sec. 63) authorizes Judicial Recorders to take acknowledgments of conveyances, does not take away a like power conferred on County Recorders by the Act of 1861 (Stats. 1861, p. 422.)—Id.

CONSTRUCTION OF STATUTES—ACKNOWLEDGMENTS BY RECORDERS.—The Act of 1867 (Stats. 1867, p. 103), providing that acknowledgments within the State shall be taken by certain officers, and not mentioning County Recorders among them, being simply an Act amendatory of a like Act of 1861 (Stats. 1861, p. 11), did not take away from County Recorders the power to take acknowledgments conferred upon them by the Practice Act of 1861 (Stats. 1861, p. 442).—Id.

232. SEC. 2. All acknowledgments or proofs heretofore taken of the execution of any instrument authorized by law to be recorded, acknowledged, or proven, and certified, or which may have been certified in the manner hereinabove provided, the record thereof now or hereafter made shall be valid and of like force and effect as if proven before the officer, and certified to in the manner heretofore required by law; *provided*, that nothing herein shall affect any right of a bona fide purchaser, or any right acquired by operation of law prior to the passage of this Act. [Act of March 11, Stats. 1867, p. 103.] **Acknowledgments heretofore taken, record valid.**

233. SEC. 5. Every officer shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be indorsed or annexed to such conveyance; such certificate shall be: First—When granted by any Judge or Clerk, under the hand of such Judge or Clerk, and the seal of the Court. Second—When granted by an officer who has a seal of office, under the hand and official seal of such officer. **Certificate of acknowledgment.**

234. SEC. 6. No acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, shall be taken, unless the person offering to make such acknowledgment shall be personally known, to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness. **Identity of persons making acknowledgments to be proved.**

235. SEC. 7. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known, to the officer granting the certificate, to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate. **Certificate, what to state.**

236. SEC. 8. Such certificate shall be substantially in the following form, to wit: "Territory of Nevada, County of ——. On this —— day of ——, A. D. ——, personally appeared before me, a Notary Public (or Judge, or officer, as the case may be,) in and for said county, A. B., known to me to be the person described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned." **Form of.**

237. SEC. 9. When the grantor is unknown to the Court or officer taking the acknowledgment, the certificate shall be in the following form, to wit: "Territory of Nevada, County of ——. On this —— day of ——, A. D. ——, personally appeared before me, a Notary Public (or Judge, or officer, as the case may be,) in and for the said county, A. B., satisfactorily proved to me to be the person described in, and who executed, **Form of, when grantor is unknown.**

the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned."

Proof of execution of conveyance. 238. SEC. 10. The proof of the execution of any conveyance, whereby any real estate is conveyed, or may be affected, shall be: First—By the testimony of a subscribing witness; or, Second—When all the subscribing witnesses are dead, or cannot be had by evidence of the handwriting of the party, and of, at least, one subscribing witness, given by a credible witness to each signature.

Same. 239. SEC. 11. No proof by a subscribing witness shall be taken unless such witness shall be personally known, to the officer taking the proof, to be the person whose name is subscribed to the conveyance as witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

Proof necessary. 240. SEC. 12. No certificate of such proof shall be granted unless such subscribing witness shall prove the person, whose name is subscribed thereto as a party, is the person described in, and who executed, the same; that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

Certificate of proof, what to set forth. 241. SEC. 13. The certificate of such proof shall set forth the following matters: First—The fact that such subscribing witness was personally known, to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. Second—The proof given by such witness of the execution of such conveyance, and of the fact that the person, whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

Proof by evidence of handwriting. 242. SEC. 14. No proof by evidence of the handwriting of the party, and of a subscribing witness, shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

When certificate on proof of handwriting to be granted. 243. SEC. 15. No certificate of any such proof shall be granted unless a competent and credible witness shall state, on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall, in like manner, state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

Witnesses may be subpœnaed to testify as to execution. 244. SEC. 16. Upon the application of any grantee in any conveyance required by this Act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance, may issue a subpœna requiring such witness to appear before such officer, and testify touching the execution thereof.

Penalty for refusing to obey subpœna.

245. SEC. 17. Every person who, being served with a subpœna, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the Judge of some Court of record, there to remain without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have been first tendered to him.

To be recorded.

246. SEC. 18. A certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof, as provided in this Act, signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the Recorder of any county in this Territory.

By married women.

247. SEC. 19. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and her husband, and certified, in the manner hereinafter provided, by the proper officer taking the acknowledgment.

Covenants binding on married women.

248. SEC. 20. No covenant, expressed or implied, in any such conveyance, shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs all her rights and interest expressed to be conveyed in such conveyance.

Acknowledgments of married women.

249. SEC. 21. Any officer authorized by this Act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

Same.

250. SEC. 22. No such acknowledgment shall be taken, unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness; nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her said husband, and that she does not wish to retract the execution of the same.

Form of certificate of acknowledgment of married woman.

251. SEC. 23. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the per-

son whose name is subscribed to such conveyance as a party thereto, or was proved be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this Act shall be valid.

To be recorded.

252. SEC. 24. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged, and certified in the manner prescribed in this Act, to operate as notice to third persons, shall be recorded in the office of the Recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

Valid without record.

Record to be notice.

253. SEC. 25. Every such conveyance or instrument of writing, acknowledged or proved and certified, and recorded in the manner prescribed in this Act, shall, from the time of filing the same with the Recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice. (1)

(1) When M. and F. act jointly in making a purchase of land, and F. has full knowledge of the nature and character of an equity which R. holds in the land purchased, and M. knows that R. asserts *some* equity, but does not know the nature, character or extent of the equity claimed nor the justice of its foundation, still both will be held to have purchased with full knowledge, for M. having heard of the claim of an equity, and having failed to inform himself when having the opportunity to do so, is in no better condition than if fully informed.—Crosier v. McLaughlin and Fulton, 1 Nev., p. 348.

PURPOSE OF RECORDING MORTGAGES.—The purpose of the record of a mortgage is simply to give notice and prevent parties who hold incumbered real estate from imposing on innocent purchasers or subsequent mortgagees.—Virgin v. Brubaker, 4 Nev., p. 31.

CONSTRUCTIVE NOTICE BY RECORD ENTIRELY STATUTORY. The matter of constructive notice by the record of conveyance is entirely a creature of statute; and its effect is to be gathered from construction of the statute.—Grellett v. Heilshorn, 4 Nev., p. 526.

RECORD OF DEEDS INTENDED FOR MORTGAGES AS NOTICE. The statute concerning conveyances has no provisions similar to those of the New York statutes, under which it is, in that State, held that the record of a deed, absolute upon its face, though intended as a mortgage, gives no notice to a subsequent mortgagee.—Id.

RECORD OF CONVEYANCES IN GENERAL AS NOTICE.—In this State both subsequent purchasers and mortgagees have constructive notice under the statute of every properly recorded conveyance affecting real estate.—Id.

LIENS OF DEEDS INTENDED AS MORTGAGES.—Where the owner of real estate made a deed of the same, absolute upon its face, but intended as a mortgage, and the same was recorded as a deed, and afterwards he made a formal mortgage upon the same property: *Held*, that the latter instrument was taken with constructive notice of, and subject to the lien of, the former.—Id.

254. SEC. 26. Every conveyance of real estate within this Territory, hereafter made, which shall not be recorded as provided in this Act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded. When void.

255. SEC. 27. Every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed, or may be affected, shall be acknowledged, or proved and certified, and recorded as other conveyances whereby real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded. Powers of attorney to be recorded

256. SEC. 28. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded. (1) Revocation of power to be recorded

(1) The deposit for record of a revocation of a power of attorney in the proper office operates under our statute as a notice to all parties dealing with the attorney. By such deposit, the revocation becomes absolute without actual notice to the attorney.—Arnold v. Stevenson, 2 Nev., p. 234.

257. SEC. 29. Every conveyance, or other instrument, conveying or affecting real estate, which shall be acknowledged, or proved and certified, as hereinafter prescribed, may, together with the certificate of acknowledgment, or proof, be read in evidence without further proof. Evidence of.

258. SEC. 30. When any such conveyance, or instrument, is acknowledged or proved, certified and recorded, in the manner hereinafter prescribed, and it shall be shown to the Court that such conveyance, or instrument, is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the Recorder, under the seal of his office, may be read in evidence without further proof. Evidence of, when lost.

259. SEC. 31. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance, or instrument, nor the record, nor the transcript of the record, of such con- Evidence may be rebutted.

veyance, or instrument, shall be conclusive, but the same may be rebutted.

Proof by other evidence. 260. SEC. 32. If the party contesting the proof of any such conveyance, or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance, or instrument, nor the record thereof, shall be received in evidence, until established by other competent proof.

Subsequent title to inure to grantee. 261. SEC. 33. If any person shall convey any real estate, by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterward acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

Adverse title. 262. SEC. 34. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

Mortgage, how discharged. 263. SEC. 35. Any mortgage that has been, or may hereafter be, recorded, may be discharged by an entry on the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the Recorder, or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded. (1)

(1) When a mortgagee assigns a note and mortgage as collateral security, and subsequently, either by fraud or mistake, has the mortgage marked satisfied on the record, the same will still be treated as a valid and subsisting mortgage in favor of the assignee, as against a subsequent mortgagee with notice.—Gibson v. Miln, 1 Nev., p. 526.

In such case the prior mortgage would only be sustained so far as to protect the assignee thereof.—Id.

Same. 264. SEC. 36. Any mortgage shall also be discharged upon the record thereof by the Recorder, in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or approved and certified, as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Discharge to be recorded. 265. SEC. 37. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage, made by the Recorder upon the record thereof.

266. SEC. 38. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance

of the conditions of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal. **Penalty for refusing certificate of discharge.**

267. SEC. 39. All conveyances of real estate heretofore made and acknowledged, or proved according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with like effect, as conveyances executed and acknowledged in pursuance of this Act. **Conveyances heretofore made.**

268. SEC. 40. The legality of the execution, acknowledgment, proof, form, or record of any conveyance, or other instrument, heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this Act, but shall depend for its validity or legality upon the laws and customs then in existence and in force in the mining and agricultural districts. (a) **Legality of, not affected.**

(a) Act concerning conveyances of mining claims. See Secs. 317, 320, post.

269. SEC. 41. Every interest in real estate granted or devised to two or more persons, other than executors and Trustees, as such, shall be a tenancy in common, unless expressly declared in the grant or devise to be a joint tenancy. **Tenancy in common.**

270. SEC. 42. The term heirs, or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant. **Inheritance and conveyance of fee.**

271. SEC. 43. Where a remainder in lands or tenements, goods or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heirs, or heirs of his or her body, or without issue, the word "heir," or "issue," shall be construed to mean heirs or issue living at the death of the person named as ancestor. **Heirs or issue and remainders**

272. SEC. 44. A future estate, depending on the contingency of the death of any persons without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent. **Posthumous child.**

273. SEC. 45. Where an estate shall be by any conveyance limited, in remainder, to the son or daughter or issue, or to the use of the son or daughter or issue of any person to be begotten, such son or daughter or issue, born after the decease of his or her father, shall take the estate in the same proportion, and in the same manner, as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death. **Same.**

274. SEC. 46. Grants of rents, or of reversions, or remainders, shall be good and effectual without attornments of the **Attornments not necessary.**

tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, shall suffer any damage thereby.

Attornment, when void. 275. SEC. 47. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenant, or in pursuance to, or in consequence of, a judgment or decree of some Court of competent jurisdiction.

Warrantees abolished. 276. SEC. 48. Lineal and collateral warrantees, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

Import of grant, bargain, and sell. 277. SEC. 49. The words "grant, bargain, and sell," in all conveyances hereafter to be made, in and by which any estate of inheritance or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyances, be construed to be the following express covenants, and none other, on the part of the grantor, for himself and his heirs to the grantee, his heirs, and assigns: First—That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right, title, or interest therein to any person other than the grantee. Second—That such real estate is, at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Fraudulent conveyances, when void. 278. SEC. 50. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created, with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents, or profits, as against such purchasers, shall be void.

Same. 279. SEC. 51. No such conveyance, or charge, shall be deemed fraudulent in favor of a subsequent purchaser, who shall have legal notice thereof at the time of his purchase, When legal unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

With power of revocation at will. 280. SEC. 52. Every conveyance or charge of or upon any estate, or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from said grantor for a valuable consideration, of any estate, or interest, so liable to be revoked, or determined, although the same be not directly revoked, determined, or altered by such grantor, by virtue of the power reserved, or expressed in such prior conveyance or charge.

Revocation and reconveyance. 281. SEC. 53. Where a power to revoke a conveyance of lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner, and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

282. SEC. 54. If a conveyance to a purchaser, under either of the last two preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall, nevertheless, be valid from the time the power of revocation shall actually vest in such person, in the same manner, and to the same extent, as if then made. **Same.**

283. SEC. 55. No estate, or interest in lands, other than for leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized in writing. (1) **Interests in land except leases to be deeded.**

(1) A legal interest in land can only be conveyed in this State by means of a deed of conveyance in writing. The right to the enjoyment and repair of a dam, and to have the water so diverted flow through certain land, is such an interest in land as can only be conveyed by deed in writing.—Lobdell v. Hall, 3 Nev., p. 507.

An Indian who has appropriated water on the public lands of the United States may maintain an action for the diversion of that water, as well as any other person.—Per BEATTY, C. J.—Id.

LEWIS, J., dissenting.—No person in this State can acquire title or right to any public land from an Indian.—Id.

Usually, a deed passes only what is described in the granting clause; but under modern and liberal rules of interpretation, an explanatory clause or *habendum* of a deed may cause that to pass which could by no possible interpretation be held to have been described in the granting clause of the deed.—McCurdy v. Alpha Co., 3 Nev., p. 27.

Parties usually describe what is intended to be granted in the granting clause of the deed. And Courts should not interpret deeds so as to carry more than is mentioned in that clause, unless the intent to carry more is clearly shown in other portions of the deed.—Id.

An explanatory clause in a deed should not be so interpreted as to be repugnant to the granting clause, especially when there is not necessarily any such conflict.—Id.

A deed may be interpreted by the aid of surrounding circumstances, which are known to and understood by the contracting parties. A full knowledge of surrounding circumstances may make that intelligible which would otherwise be unintelligible.—Id.

DECLARATION OF TRUST AS TO LAND MUST BE IN WRITING.—Under section fifty-five of the statute concerning conveyances (Stats. of 1861, p. 11), a declaration of trust as to land must be by deed or conveyance in writing, subscribed by the party declaring the same, or by his lawful agent, thereunto authorized by writing.—Sime v. Howard, 4 Nev., p. 473.

DECLARATION OF TRUST DOES NOT REQUIRE STAMP.—A mere declaration in writing that the person making it holds lands conveyed to him in trust for another is not such a conveyance or instrument as requires either a United States or a State revenue stamp.—Id.

DECLARATION OF TRUST MAY BE MADE AT ANY TIME.—A valid declaration of trust as to lands held for the use of another may be made at any time, and does not necessarily have to be made at the time of the creation of the trust.—Id.

DECLARATION OF TRUST AS EVIDENCE.—Where certain land, deeded by one person to another in trust to convey back a portion of it on request, was by the trustee mortgaged, and afterwards, on a foreclosure suit being brought, the trustee executed a declaration in writing of the trust: *Held*, that such declaration was valid and effectual in proof of the trust; that it was properly admitted in evidence as such; and that the trust took precedence of the claims of all who did not occupy the position of bona fide purchasers for value without notice.—Id.

EQUITIES OF CESTUI QUE TRUST.—Where there is a purchase of real estate from the legal owner and no consideration is paid, or where the property passes in payment of or as a security for a preëxisting debt, the grantee takes subject to all existent equities against the grantor.—Id.

EVIDENCE—PAROL PROOF AS TO TRUSTS.—An express trust cannot be created by parol; but all the facts and circumstances out of which an implied trust is raised may be proved by parol, such as the fact that the alleged *cestui que trust* furnished the money with which the alleged trust property was purchased, and that such money was not merely loaned.—White v. Sheldon, 4 Nev., p. 280.

PRESUMPTIONS FROM ADVANCE OF MONEY.—The mere circumstance of money being advanced by one person to another would give rise to the presumption of a loan or payment of a debt, and not to the presumption that it was furnished for the purchase of property in trust.—Id.

RESULTING TRUST—PURCHASE OF LAND BY ONE, CONSIDERATION BY ANOTHER.—Where an estate is purchased in the name of one person and the consideration is paid at the time by another, there is a resulting trust in favor of the latter; but to establish such trust the evidence that the consideration was so furnished must be clear.—Frederick v. Haas, 5 Nev., p. 389.

TIME OF ADVANCING CONSIDERATION TO CREATE RESULTING TRUST.—To establish a resulting trust in favor of a person advancing the consideration for a purchase of land in the name of another, the consideration must be shown to have been advanced at the time the title was acquired; as the trust must be created at the very time the title passes, and no subsequent transaction being allowed to impress the character of a trust estate upon that which was absolute in the purchaser at the time it was acquired.—Id.

RESULTING TRUST—ADVANCE OF CONSIDERATION IN CHATTELS.—Where Wolfe and Frederick agreed with Stowe to purchase land of him for five hundred dollars, each to have an undivided half, and Wolfe accepted from the agent of Frederick at the time a watch in lieu of one hundred and seventy-five dollars of the purchase money, and other chattels, for the purpose of selling them and making up the balance of two hundred and fifty dollars, and took the deed of the land in his own name, canceled a debt due him by Stowe in payment thereof and sold the chattels and made up the balance: *Held*, that there was a resulting trust for one half the land in Wolfe in favor of Frederick.—Id.

EVIDENCE TO SHOW RESULTING TRUST.—To establish a resulting trust in favor of one furnishing the consideration for land purchased in the name of another, it is enough for the *cestui que trust* to show an agreement on the part of the trustee to purchase, and that the consideration was furnished to him before he acquired the title.—Id.

PRINCIPAL AND AGENT—ADVANCE BY AGENT FOR BENEFIT OF PRINCIPAL.—If an agent advance his own money or property for the benefit of his principal, and the principal ratify such advance, the transaction becomes a loan dating from the time of the advance, and the principal is entitled to the advantage of the advance the same as if it had been his own money or property.—Id.

284. SEC. 56. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate, by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law. Not to apply to wills.

285. SEC. 57. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made. (a) (1) Contracts to be in writing.

(a) Marks instead of signatures, see Sec. 319, post.

(1) A party executing a deed cannot avoid it because he spells his name wrong in attaching his signature to it.—O'Meara v. The North American Co., 2 Nev., p. 113.

286. SEC. 58. Every instrument required to be subscribed by any person under the last preceding section may be subscribed by the agent of such party lawfully authorized. Agent to subscribe.

287. SEC. 59. Nothing contained in this Act shall be construed to abridge the powers of Courts to compel the specific performance of agreements in cases of part performance of such agreements. When not applicable.

Transfers in trust for assignors void.

288. SEC. 60. All deeds of gift, conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Certain agreements void unless in writing and signed.

289. SEC. 61. In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith: First, every agreement that, by the terms, is not to be performed within one year from the making thereof; second, every special promise to answer for the debt, default, or miscarriage of another; third, every promise or undertaking made upon consideration of marriage, except mutual promises to marry. (1)

(1) Where the purchaser of real property agrees with the vendor to pay certain incumbrances upon it, as a part of the consideration of the conveyance, the person holding such incumbrance, or the person to whom such payment is to be made, may maintain an action upon such promise or agreement.—Ruhling v. Hackett, 1 Nev., p. 360.

Such an understanding or promise does not come within the Statute of Frauds, and need not be in writing.—Id.

The promise to answer for the debt of another, and the consideration for that promise, need not be contained in the same paper, provided the signature of the guarantor can be connected with both.—Vandoran v. Tjader, Winters et al., 1 Nev., p. 380.

A note imports consideration to the maker, but it does not import a consideration for a guaranty of its payment by a third party.—Id.

The intent of the Statute of Frauds seems to be that the writing itself, without extraneous evidence, should show the consideration for the guaranty.—Id.

Where the vendee of goods, in consideration of the sale, undertakes to pay certain debts to the creditors of the vendor, this is not undertaking to answer for the debt or default of another, but only to pay his own debt in a particular manner.—Alcalda v. Morales, 3 Nev., p. 132.

Same.

290. SEC. 62. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or over, shall be void unless: First, a note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or, second, unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in action; or, third, unless the buyer shall, at the time, pay some part of the purchase money. (2)

(2) When A. contracts to make a certain number of bricks for B., and deliver them to him at a certain price, B. to select the spot where, and the clay out of which, the bricks are to be manufactured: this is a contract rather for the manufacture than sale of brick, and does not come within the sixty-second

section of the Act in relation to conveyances, etc., requiring contracts for the sale of goods to be delivered in future to be in writing.—O'Neil v. New York and Silver Peak Mining Co., 3 Nev., p. 141.

291. SEC. 63. Whenever goods shall be sold at auction, and the auctioneer shall, at the time of sale, enter in a sale-book a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

Auction sale, note of, defined.

292. SEC. 64. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith. (1)

Sale of goods when evidence of fraud.

(1) Delivery of possession of personal property may be either actual or constructive; an actual delivery is contemplated by the statute, unless such delivery be impossible or extremely inconvenient, in which case a symbolical delivery is sufficient. Doak v. Brubaker, 1 Nev., p. 218.

Where the property is in the possession of a bailee also, actual delivery is not necessary; the only delivery which could be made would be to give an order for it, or deliver the receipt, or obtain the recognition of the bailee, but when in the possession of an agent or servant, a different rule prevails.—Id.

H., the owner of two mules, keeps them at a public stable, and uses them in hauling for C. C. pays the owner of the stable for keep of mules. Subsequently, C. buys the mules of H., and immediately puts them in a team with other mules of his own, driven by another party in the employ of C. In a few days they are removed from the public stable to C.'s private stable. *Held*, this is an *immediate delivery*, within the meaning of that phrase in the Statute of Frauds.—Carpenter v. Clark, 2 Nev., p. 243.

Several months after the purchase of these two mules by C., he employs H. as a teamster, and sets him to driving a team of eight mules—two of which he had purchased a few months back from H.; the others had never been owned by H. The mules were all kept at the stable of C. *Held*, this was not a violation of that clause of the law regarding fraudulent conveyances, which requires a continued change of possession.—Id.

When real estate is sold, and at the same time possession of the realty is delivered by the vendor to the vendee, a bill of sale from the same vendor to the same vendee is given for the personal property in and on the real estate sold, the possession of the personal property passes with the possession of the realty, and no removal or other delivery of the personal property is necessary than that arising from contract and the actual change of possession of the realty. But when the same bill of sale is also of other property not on the real estate sold, there must be other and actual delivery to pass the possession as against creditors.—Sharon v. Shaw, 2 Nev., p. 289.

The mere request made to a servant of the vendor who has the property in actual possession, to keep it for the vendee, without any removal or change in the situation of the property, is not an actual delivery or change of possession of the property.—Id.

WANT OF DELIVERY, WHEN CONCLUSIVE EVIDENCE OF FRAUD.—Under the Statute of Frauds the want of an immediate delivery, and an actual and continued change of possession, in case of a sale of personal property, is *conclusive evidence of fraud* as against the creditors of the vendor, and it makes no difference, so far as that question is concerned, whether such creditors had notice of an attempted sale or not.—Lawrence v. Burnham, 4 Nev., p. 361.

DELIVERY OF GOODS UNDER STATUTE OF FRAUDS.—Where Robinson worked Lawrence's farm on shares for a term expiring October 1st, 1866, and on that day Lawrence took possession of one room in the house, leaving Robinson and his family living in the house as before, and commenced collecting pay for the pasturage of cattle on the farm; and the grain, owned in common, having been thrashed after the term, was placed in two separate bins in the barn; and while it was there, Robinson sold his share, which was in one of the bins, to Lawrence, but there was no other delivery, except that Robinson, going with Lawrence to the barn, said in the presence of a witness, "Here is the grain I have sold you," and Robinson continued to keep a key of the barn, in which he also continued to keep his horses as before: *Held*, that there was no such delivery of the grain as to take the sale out of the Statute of Frauds, or protect the property as that of Lawrence from attaching creditors of Robinson.—Id.

SALE—EVIDENCE OF CONTINUED CHANGE OF POSSESSION. In an action against an officer to recover personal property seized by him on execution against a third person, from whom plaintiff claimed to have purchased and received possession of it previous to the seizure, and in which the question of continued change of possession became involved: *Held*, that it was competent for the plaintiff to show his acts of ownership after the sale, and that any exclusion of such testimony was error.—Conway v. Edwards, 6 Nev., p. 190.

STATUTE OF FRAUDS—PROOF OF SALE.—To show a continued change of possession, such as is necessary to support a sale of personal property under the Statute of Frauds, nothing generally can have a more direct tendency than the control and management of the property, or acts of ownership exercised over it by the vendee.—Id.

LEASE OF PREMISES AS EVIDENCE OF SALE OF GOODS.—Where it became an issue whether certain unbaled hay, which had been sold, had passed to the continued possession of the vendee, as claimed by him: *Held*, that a lease by the vendor to the vendee of the premises in which the hay was kept was competent and material testimony for the vendee, and that it was error to prevent him from introducing it.—Id.

SALE—CHANGE OF POSSESSION.—Where it appeared that Lewis purchased of Waddell certain mules and harness, giving therefor his two promissory notes for five hundred dollars each, and crediting one hundred dollars on an account; that he immediately took possession of them, and freighted with them for three or four weeks, driving them himself; that he then contracted to haul for Waddell, who was to pay therefor by the day, and also all the expenses of the team; that Lewis had paid one of his notes; that the team continued in Lewis' possession, though stabled in a barn owned by Waddell: *Held*, that the evidence was sufficient to establish an actual and continued change of possession, as against a claim of Waddell's creditors.—Lewis v. Wilcox, 6 Nev., p. 215.

DECLARATIONS OF VENDOR AFTER SALE.—In a question as to the validity, under the Statute of Frauds, of a sale of personal property, where the fact of the sale and change of possession was established: *Held*, that the declarations of the vendor, made after such sale and change of possession, were mere hearsay evidence, and not admissible to impeach or defeat the sale.—Id.

SALE—DELIVERY AND CHANGE OF POSSESSION.—Where Hanchett sold a team to Clute, who took and retained possession for one day, and then allowed Hanchett to take it back and keep and use it six weeks, Clute meanwhile paying the expenses and receiving the earnings; and then Clute resumed possession and put it on a ranch; and the next day suits were commenced against Hanchett and the team attached as his property: *Held*, that the sale and delivery was valid as against the attaching creditors.—Clute v. Steele, 6 Nev., p. 235.

DELIVERY AFTER SALE AND BEFORE ATTACHMENT.—Where goods were sold and the vendee took possession at a time subsequent to the sale but before the levy of an attachment: *Held*, that the delivery before the attachment satisfied the Statute of Frauds and validated the sale.—Id.

STATUTE OF FRAUDS—STATUS OF CREDITOR TO ATTACK SALE OF GOODS FOR WANT OF DELIVERY.—A mere creditor at large is not in a position to attack a sale of goods by his debtor on the ground of want of delivery and change of possession under the Statute of Frauds; before he can do so, he must acquire a lien, by attachment or otherwise.—Ib.

(1) The declarations of a vendor, made before the sale, of his intention to make a transfer to delay his creditors, will be taken as evidence of *his* intention in making a sale, but a knowledge of that intention must be brought home to the

vendee to avoid the sale.—Gregory v. Frothingham, 1 Nev., p. 253.

The declarations of a partner or part owner in a mill which is building, who deeds his interest in the real estate to his partner, but continues in possession, controlling the property just as before the deed was made, may be taken, in connection with his continued possession and control of business, to show his continued interest in the property.—Id.

Creditor defined.

293. SEC. 65. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

Mortgages of personal property, when valid.

Proviso.

294. SEC. 66. No mortgage of personal property, hereafter made, shall be valid against any other person than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by, the mortgagee; *provided*, that a mortgage upon growing crops, executed, acknowledged, and recorded, shall be valid as against third parties without such delivery of possession, and such lien shall continue until after such crop shall have been harvested, thrashed, and delivered to the order of the mortgagee; *provided*, such mortgage may be executed as well before as after the planting of the crop; and if executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of the parties that the same shall take effect upon the crop when planted. The affidavit of both the mortgagor and mortgagee, or some one in their behalf, in case of absence from the county, shall be appended or annexed to the mortgage, setting forth that the mortgage is given for a debt actually owing from the mortgagor to the mortgagee, and the same is not made nor received with intent to hinder, delay, nor defraud any creditor of the mortgagor. Any growing crop mortgaged as aforesaid may be seized under attachment or execution, and the surplus over and above the mortgaged debt secured to any other creditor of the mortgagor by serving upon the mortgagee, or, in his absence from the county, upon his agent or other person in charge or possession of such crop, a copy of the attachment or execution. But the actual possession of such crop shall not be taken from the mortgagee unless full payment of the mortgagee's demand, with interest, be first paid, which, if done by a creditor of the mortgagor, shall entitle him to hold such crop and the possession thereof, under his levy, for repayment to him of the amount so paid, with interest, as provided in the mortgage so paid, in addition to his own individual demand. [As amended February 10th, Stats. 1869, p. 55.]

Affidavit of mortgagor and mortgagee.

Possession of crop.

Bottomry respondentia, etc.

295. SEC. 67. Nothing contained in the last three sections shall be construed to apply to contracts of bottomry, respondentia, or assignments or hypothecations of vessels, or goods at sea, or in foreign States, or without this Territory; *provided*, the assignee, or mortgagee, shall take possession of such goods as soon as may be, after the arrival thereof within this Territory.

296. SEC. 68. Every instrument required by any of the provisions of this Act to be subscribed by any party, may be subscribed by the lawful agent of such party. Agent to subscribe.

297. SEC. 69. Every conveyance, or assignment, in writing, or otherwise, of any estate or interests in lands, or in goods in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond, or other evidence of debt given, suits commenced, decree, or judgment suffered, with the like intent, as against the persons hindered, delayed, or defrauded, shall be void. Contracts to delay or defraud creditors void.

298. SEC. 70. Every grant or assignment, of any existing trust in land, goods, or things in action, unless the same shall be in writing, subscribed by the person making the same, or by his agent lawfully authorized, shall be void. Grants of trust, when void.

299. SEC. 71. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this Act, as against creditors, or purchasers, shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors or purchasers. Instruments, when void against heirs.

300. SEC. 72. The question of fraudulent intent, in all cases arising under the provisions of this Act, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration. Fraud a question of fact.

301. SEC. 73. The provisions of this Act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. Not to affect purchaser for value.

302. SEC. 74. The term "lands," as used in this Act, shall be construed as co-extensive in meaning with lands, tenements, and hereditaments, and shall include in its meaning all possessory right to the soil for mining and other purposes, and the term "estate and interest in lands," shall be construed and embrace every estate and interest, present and future, vested and contingent, in lands as above defined. Lands and estates and interest in lands defined.

303. SEC. 75. The term "conveyance," as used in this Act, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered. Conveyance defined.

304. SEC. 76. A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, all quartz and mining claims, and all such personal property as shall be fixed in its structure to the soil, acknowledged in manner and form as mortgages upon real estate are required by law to be acknowledged and recorded in the office of the Recorder in the county in which Mortgage on possessory claims to be recorded.

the property is situated, shall have the same effect against third persons as mortgages upon real estate.

Mining rules not to be interfered with.

305. SEC. 77. This Act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations, or customs in regard to the locating, holding, or forfeiture of claims, but, in all cases of mortgages of mining interests under this Act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations, or customs of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by the Court ordering the sale upon a foreclosure; *provided*, that such compensation shall, in no case, exceed the amount realized from the claim by a foreclosure and sale.

Leases, limitation of.

306. SEC. 78. No lands within this Territory shall hereafter be conveyed by lease, or otherwise, except in fee and perpetual succession, for a longer period than ten years; nor shall any town or city lots, or other real property, be so conveyed for a longer time than twenty years. All leases hereafter made, contrary to the provisions of this Act, shall be void.

An Act to provide for the conveyance of mining claims.

[Approved December 12, 1862, p. 12.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Conveyed in same manner as real estate.

307. SECTION 1. Conveyance of mining claims shall hereafter require the same formalities and be subject to the same rules of construction as the transfers and conveyances of other real estate. (1)

(1) The words "mining ground," when used in a deed, have a technical meaning. They refer to that interest which a mere occupant of the mine has in the same. They are not the words used when a fee simple or leasehold interest in real estate is to be conveyed.—Hale & Norcross G. and S. M. Co. v. Storey Co. et al., 1 Nev., p. 105.

Former conveyances construed.

308. SEC 2. All conveyances of mining claims heretofore made by bills of sale or other instruments in writing, with or without seals, recorded or unrecorded, shall be construed in accordance with the lawful local rules, regulations, and customs of the miners in the several mining districts of this Territory; and if heretofore regarded valid and binding in such districts, shall have the same force and effect between the parties thereto, as prima facie evidence of sale, as if such conveyances had been made by deed under seal.

How proved.

308†. SEC. 3. The location and transfers of mining claims heretofore made, shall be established and proved in contestation before Courts, by the local rules, regulations, or customs of the miners in the several mining districts of the Territory in which such location and transfers were made. (1)

(1) To enable a party to maintain a right to a mining claim after the right is acquired, it is necessary that the party continue substantially to comply with the mining rules and customs established and in force in the district where the claim is situated.—Oremuno v. Uncle Sam G. and S. M. Co., 1 Nev., p. 217.

Testimony as to mining customs may be introduced under our statute, however recent the date or short the duration of their establishment.—Smith et al. v. North American Mining Co., 1 Nev., p. 421.

When A. first locates a ledge on certain croppings extending eight hundred feet northward and southward, B. afterwards locates a ledge near by and is encouraged to go to work by A., who declares it to be his opinion that there are two ledges, and that their claims will not interfere. Afterwards, it turns out there are in fact two distinct ledges running into the earth at different angles and widely diverging as they go down, but both mingling their croppings together where A. made his older location, the declarations of A. are evidence he located but one ledge, and may operate as an estoppel against his claiming both.—Van Valkenburg et al. vs. Huff et al., 1 Nev., p. 142.

If A. locates a mining claim in the name of B., occupies and works on it, but uses B.'s name, and does all acts in his (B.'s) name, he cannot maintain any action for the claim in his own name. The law would consider his possession the possession of B. He could only acquire an independent right in the claim by abandoning the first location and relocating in his own name. His rights would date from second location.—Id.

If one locates a mining claim for himself and others, and then enters into a contract for himself and on behalf of the co-locators to give a part of the ground for developing the mine, can the parties whose names he has used in the location accept of their interest in the mine without also ratifying the contract for developing the mine?—Chase v. Savage G. and S. M. Co., 2 Nev., p. 9.

In such case, if the acting locator draws up a contract with prospectors, which shows on its face that it was intended to be executed, not only by the party preparing the instrument, but also by others, whose names were attached without their knowledge to the notice of location, these latter are not bound until they sign the contract. The acting locator does not, in such case, profess to act for his associates.—Id.

After notices of location were posted and recorded, and the limits of the mine determined, all the locators became tenants in common. The acting locators could not dispose of the interests of their cotenants.—Id.

If a contract between prospectors and the several locators of a mine is drafted, and signed by part only of the locators, if the prospectors go on to work, it is at their own risk. Those not signing or consenting to the contract are not bound.—Id.

If, however, all had been consulted and agreed to the contract, and permitted the prospectors to go on with the work, probably they might have been compelled to a specific performance, although some of them had neglected to sign the contract.. But the contract could not be enforced against one who never assented to it.—Id.

When a suit is brought for a blind ledge, or lode bounded by walls found at the depth of two hundred feet below the surface, the ledge only and no part of the surface can be recovered.—Bullion G. and S. Mining Co. v. Crœsus G. and S. Mining Co., 2 Nev., p. 168.

When a miner locates a portion of the surface, and also a lode or ledge following its dips, angles, and spurs, he may have his common law judgment for the surface, and also a judgment following the lode under other public lands.—Id.

When a ledge, located as such, comes to the surface, the locator may recover the surface, provided the outline of the ledge is visible on the surface.—Id.

The common law doctrine, that he who possesses the surface of the earth owns all to the center of earth, is greatly modified as to the rights of miners and others on the public lands. One may be entitled to the occupancy of the surface, another to the veins of mineral running under the same land.—Id.

The fact that plaintiff recovered a vein or lead gives it no right to hoisting works erected for the purpose of taking ore from that vein, unless it also had recovered the surface on which the hoisting works were erected.—Id.

A miner appropriating a piece of the public domain for mining purposes has a right to the exclusive possession of the ground so taken up.—Gotschall v. Melsing, 2 Nev., p. 185.

A miner cannot by mere notice take up a piece of mining ground and hold it for five years without work or occupation; especially when there is not even an intention to work it, except on the happening of a very uncertain event.—Id.

The mining laws of the locality govern the location and manner of developing the mines, and when they directly point out how such mining claims must be located, and how the possession, once acquired, is to be maintained, that course must be strictly pursued.—Mallett v. Uncle Sam G. & S. M. Co., 1 Nev., p. 189.

When the Courts presume title in the first appropriator, it can only be a title subject to the conditions imposed by the mining laws and customs, under and by virtue of which it was acquired.—Id.

Where no mining laws exist, the miner locating a claim would hold only by actual occupancy, and by such work for the development of the mine as would, under all the circumstances, be deemed reasonable, and his right of possession would only be continued by occupancy and use.—Id.

There can be no strict abandonment of property without the intention to do so.

The bare lapse of time, short of the Statute of Limitations, and unaccompanied by other circumstances, would be no evidence of abandonment.

The possession of one partner or tenant in common inures to the benefit of all, until such possession becomes adverse.—Id.

Abandonment is a mixed question of law and fact. If, in fact, a person intend to give up his claim and quit paying assessments in pursuance of that intention, it is an abandonment in fact.—Oremuno v. Uncle Sam G. and S. M. Co., 1 Nev., p. 217.

A party who insists upon forfeiture and abandonment, and relies thereon to build up a right in himself to the thing, franchise, or easement forfeited or abandoned, is, upon first principles, bound to establish the fact or facts upon which his asserted claim of right depends.—Id.

An Act for the relief of purchasers at sales of real estate, or any interest therein, by public officers.

[Approved December 12, 1862, p. 13.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

309. SECTION 1. Where lands, or any estate or interest therein, have been or may hereafter be sold by a Sheriff or Constable, or other authorized officer, for taxes, or under an execution or order of sale, and the purchaser or his assigns may be entitled to a deed, and the Sheriff or other officer who made the sale shall have died, or shall be absent from the Territory, or in any way disqualified, it shall be lawful for the successor of the said Sheriff or Constable, or other officer, to make such deed to such purchaser, his asignee or assignees, in the same manner and with the same effect as if made by the officer making the sale. **Other officers may make deeds in absence or death of Sheriff.**

310. SEC. 2. Such deeds, so made as aforesaid, shall have the same force and effect as evidence as if made by the officer making such sale. **Effect of deed.**

An Act supplementary to an Act concerning conveyances.

[Approved December 17, 1862, p. 29.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

311. SECTION 1. All instruments of writing now copied into the proper books of record of the office of the County Recorders of the several counties of this Territory, shall, after the passage of this Act, be deemed to impart to subsequent purchasers and **County records.**

incumbrancers, and all other persons whomsoever, notice of all deeds, mortgages, powers of attorney, contracts, conveyances, or other instruments, notwithstanding any defect, omission, or informality existing in the execution, acknowledgment, or certificate of recording the same; *provided*, that nothing herein contained shall be construed to affect any rights heretofore acquired in the hands of subsequent grantees or assignees.

Certified copies. 312. SEC. 2. Duly certified copies of such instruments as are embraced in section one of this Act may be read in evidence, under the same circumstances and rules as are now or may hereafter be provided by law for using copies of instruments duly executed and recorded; *provided*, that proof shall be first made that the instruments, copies of which it is proposed to use, were genuine instruments, and were in truth executed by the grantor or grantors therein named.

An Act concerning conveyances executed without the State.

[Approved February 13, 1871, p. 54.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Acknowledgments, by whom taken out of the State. 313. SECTION 1. The proof or acknowledgment of every conveyance affecting any real estate, taken without this State, but within the United States, shall be taken by some one of the following officers: A Judge or Clerk of a Court having a seal, or some Notary Public or Justice of the Peace, or by any Commissioner appointed by the Governor of this State, for that purpose; *provided*, that when the acknowledgment is taken by a Justice of the Peace, the same shall be accompanied with the certificate of the Clerk of a Court of record of the county having a seal as to the official character of the Justice and the authenticity of his signature.

Proviso.

Heretofore taken, record valid. 314. SEC. 2. All acknowledgments of proofs heretofore taken of the execution of any instrument authorized by law to be recorded, acknowledged, or proven and certified, or which may have been certified in the manner hereinabove provided, the record thereof now or hereafter made shall be valid and of like force and effect as if proven before the officer and certified to in the manner heretofore required by law; *provided*, that nothing herein shall affect any right of a bona fide purchaser, or any right acquired by operation of law, prior to the passage of this Act.

Proviso.

An Act to provide for preserving the evidence of the official acts of officers taking acknowledgments, etc.

[Approved February 20, 1869, p. 72.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

315. SECTION 1. Each officer authorized by law to take the proof or acknowledgment of the execution of conveyances of real estate, or other instrument required by law to be proved or acknowledged, shall keep a record of all his official acts in relation thereto in a book to be provided by him for that purpose, in which shall be entered the date of the proof or acknowledgment thereof, the date of the instrument, the name or character of the instrument proved or acknowledged, and the names of each of the parties thereto, as grantor, grantee, or otherwise. Said record shall, during business hours, be open to public inspection without fee or reward. **Officers taking acknowledgments required to keep record.**

316. SEC. 2. Any officer aforesaid refusing or neglecting to comply with the requirements of this Act shall be deemed and held guilty of a misdemeanor, and, on conviction thereof, fined before any Court of competent jurisdiction in any sum not less than fifty nor more than five hundred dollars, and shall, in addition, be liable on his official bond in damages to any person injured by such refusal or neglect to the extent of the injury sustained by reason of the refusal or neglect mentioned in this section. **Penalty for refusal or neglect.** **Damages.**

An Act concerning conveyances of mining locations and claims by minors.

[Approved February 27, 1869, p. 96.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

317. SECTION 1. In all cases in this State, since the first day of July, A. D. eighteen hundred and sixty-seven, where minors over the age of eighteen years have sold interests acquired by them in mining claims or locations by virtue of their having located such claims, or having been located therein by others, and have executed deeds purporting to convey such interests, such deeds, if otherwise sufficient in law, shall be held valid and sufficient to convey such interest fully and completely, notwithstanding the minority of the grantor, and without any power or right of subsequent revocation; *provided*, that this section shall not apply to cases where any fraud was practiced upon such minor, or any undue or improper advantage was taken by his purchaser or any other person to induce such minor to execute such deed; *and provided, further*, that this section shall not apply to or affect any suits which may now **Deed of minor for interest in mining claim held valid.** **Proviso.** **Not to affect suits pending.**

be pending in any Courts of this State, in which the legality or validity of such deeds may be involved.

Minors empowered to sell or convey mining claims or locations.

318. SEC. 2. All minors in this State, over the age of eighteen years, are hereby authorized and empowered to sell and convey by deed such interests as they may have acquired, or may hereafter acquire, in mining claims or mining locations within this State, by virtue of locating the same, or being located therein, and such deed shall, if otherwise sufficient in law, be held valid and sufficient to convey such interest fully and completely, and without the right of subsequent revocation, notwithstanding the minority of the grantor, subject, however, to the same provisions and limitations contained in the first section of this Act.

An Act to provide for marks instead of signatures.

[Approved December 17, 1862, p. 33.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Marks instead of signatures.

319. SECTION 1. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person make his mark, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

An Act concerning records now in the custody of County Recorders of this State.

[Approved February 20, 1873, p. 63.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Mining records to impart notice.

320. SECTION 1. All instruments of writing relating to mining claims now copied into books of mining or other records, now in the office of the County Recorders of the several counties of this State, shall, after the passage of this Act, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of the contents thereof; *provided*, that nothing herein contained shall be construed to affect any rights heretofore acquired or vested.

Copies may be read in evidence.

321. SEC. 2. Copies of the records of all such instruments mentioned in section one of this Act, duly certified by the Recorder in whose custody such records are, may be read in evidence under the same circumstances and rules as are now or may hereafter be provided by law, for using copies of instruments relating to mining claims or real estate, duly executed or acknowledged, or proved and recorded.

An Act supplementary to an Act entitled "An Act to abolish the use of State stamps, and to provide for the settlement of outstanding stamps," approved February twenty-first, eighteen hundred and seventy-three.

[Approved March 7, 1873, p. 173.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Instruments not stamped admissible in evidence

322. SECTION 1. All instruments required to be stamped with State revenue stamps, prior to the twenty-first day of February, A. D. eighteen hundred and seventy-three, which shall remain unstamped up to that date, shall be admissible in the Courts as evidence, in the same manner and to the same effect as if said instruments had been properly stamped at the time of their execution.

In view of their importance, we here insert all the amended, superseded, and repealed Acts and sections concerning the proof or acknowledgments of conveyances, as convenient references:

SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate, shall be taken by some one of the following officers: First, if acknowledged or proved within this Territory, by some Judge or Clerk of a Court having a seal, or some Notary Public or Justice of the Peace of the proper county; second, if acknowledged or approved without this Territory, and within the United States, by some Judge or Clerk of any Court of the United States, or of any State or Territory, having a seal, or by any Commissioner appointed by the Government of this Territory for that purpose; third, if acknowledged or proved without the United States, by some Judge or Clerk of any Court of any State, Kingdom, or Empire, having a seal, or by any Notary Public therein, or by any Minister, Commissioner, or Consul of the United States appointed to reside therein.—Act of November 5th (Stats. 1861, p. 11.)

An Act concerning the acknowledgment of conveyances.

[Approved February 20, 1864, p. 69.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Acknowledgments of deeds, conveyances, or other instruments, taken out of this Territory, affecting real estate within this Territory, before any Notary Public authorized, according to law, to take acknowledgments, shall be taken and deemed to be good and valid in law; *provided, however*, that a certificate of the Secretary of State or Territory, or a Judge of a Court of record, as to the official character of such Notary Public, shall accompany the certificate of the Notary Public.

An Act to legalize conveyances made out of the Territory of Nevada.

[Approved February 20, 1864, p. 137.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Deeds, conveyances, or other instruments, affecting title to real property, acknowledged by a Justice of the Peace, and accompanied by the certificate of the Governor of the Selkirk Settlement, in the British Possessions, shall be entitled to record and deemed valid in the Territory.

An Act to amend an Act entitled "An Act concerning the acknowledgment of conveyances," approved February 20, 1864.

[Approved January 26, 1866, p. 52.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Acknowledgments of powers of attorney, or of deeds, conveyances, or of other instruments affecting real estate within this State, taken at any time out of this State, but within some other State or Territory of the United States, before any Notary Public, Justice of the Peace, or other officer authorized by the law of such State or Territory, or of this State, to take such acknowledgments, shall be deemed and held good and valid; and all powers of attorney, deeds, or other instruments, acknowledged as aforesaid, and certified by the officer taking the same, may be recorded as other such instruments, and read in evidence in any of the Courts of this State; *provided, however,* that a certificate of the Secretary of State or the Territory, or a Judge or a Clerk of a Court having a seal, with the impression of such seal attached, as to the official character of such Notary Public, Justice of the Peace, or other officer, shall accompany the certificate of the officer or person taking the acknowledgments aforesaid.

SEC. 2. But no such instrument, already recorded, shall be construed to impart notice prior to the passage of this Act, nor shall anything in this Act be so construed as to affect any rights vested or accrued at the passage of this Act.

CHAPTER XXVII.

OF THE AGE OF MAJORITY.

SECTION 323. Lawful age.

An Act fixing the age of majority.

[Approved November 21, 1861, p. 40.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

323. SECTION 1. All male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age. Lawful age.

CHAPTER XXVIII.

OF THE APPOINTMENT OF COMMISSIONERS OF DEEDS, AND THEIR FEES.

SECTION 324. Governor may appoint Commissioners; term of office; powers.
325. Acts legal.
326. Oath of office.
327. Copy of Act to be transmitted.
328. Fee, and application of.
329. Act repealed.

An Act empowering the Governor to appoint Commissioners of Deeds, and to define their duties.

[Approved February 4, 1865, p. 130.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

324. SECTION 1. The Governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the territories and districts thereof, and in each foreign State, kingdom, province, territory, and colony, one or more Commissioners of Deeds, to continue in office four years, Governor may appoint Commissioners. Term of office.

Powers. unless sooner removed by him. Every Commissioner of Deeds so appointed, shall have power to administer oaths, and to take and certify depositions and affidavits to be used in this State, and also to take the acknowledgment or proof of any deed or other instrument, to be recorded in this State, and duly certify the same under his hand and official seal.

Acts legal. 325. SEC. 2. All oaths administered by said Commissioners, all depositions and affidavits taken by them, and all acknowledgments and proofs of deeds, and other instruments aforesaid, taken and certified by them and under their seals as such Commissioners, shall have the same force and effect in law, for all purposes whatever, as if done and certified by any Notary Public, or other officer, in and for this State, who is now or hereafter may be authorized by law to perform such acts.

Oath of office. 326. SEC. 3. Before any Commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath that he will faithfully perform and discharge all the duties of his office, which oath shall be filed in the office of the Secretary of State of the State of Nevada, within six months after being taken and subscribed.

SEC. 4. (Was repealed by Act, 1865, p. 152.)

Copy of Act to be transmitted 327. SEC. 5. It is hereby made the duty of the Secretary of State to transmit a copy of this Act, with the commission, to each person appointed under the provisions thereof.

Fee, and application of. 328. SEC. 6. Before any commission shall be delivered to any appointee under the provisions of this Act, a fee of ten dollars on such commission, exclusive of other legal charges thereon, shall be paid therefor to the said Secretary of State, and shall be accounted for by him and paid into the "Library Fund" of this State, to be appropriated to the purchase of books therefor, in such manner as is or may be provided by law.

Act repealed. 329. SEC. 7. An Act of the Legislative Assembly of the Territory of Nevada, entitled "An Act empowering the Governor to appoint Commissioners of Deeds, and defining the duties of such office," approved October thirtieth, one thousand eight hundred and sixty-one, is hereby repealed. (Stats. 1861, p. 2.)

CHAPTER XXIX.

OF THE APPOINTMENT OF NOTARIES PUBLIC, AND THEIR DUTIES.

SECTION 330. Number of Notaries to be appointed; proviso.
331. Official oath and bond.
332. To be filed.
333. Powers and duties.
334. Same.
335. Same.

SECTION 336. Powers and duties.
337. Record to be kept.
338. Same.
339. Seal.
340. Certified copy of record.
341. Protests.
342. Penalty for neglect of duty.
343. Removal, resignation, etc.
344. Successor.
345. Certified copies.
346. Fees.
347. Act repealed.
348. Acts legalized; continued in office until Act goes into effect.

An Act to provide for the appointment of Notaries Public, and defining their duties.

[Approved February 9, 1864, p. 46.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

330. SECTION 1. The Governor is hereby authorized to appoint and commission Notaries Public in the several counties in this State as follows: For Storey County, twelve; Lander County, sixteen; Nye County, sixteen; Churchill County, four; Esmeralda County, seven; Ormsby County, four; Humboldt County, sixteen; Washoe County, six; Douglas County, three; Lyon County, eight; Roop County, two; and for any new county hereafter created or organized, six; who shall hold office for the term of two years; *provided*, the Governor may at any time for cause revoke the commission of any Notary Public appointed under the provisions of this Act. [As amended March 13, Stats. 1867, p. 124.] **Number of Notaries to be appointed.** **Proviso.**

331. SEC. 2. Each Notary Public, before he enters upon the duties of his office, and at the time he receives his commission, shall pay to the Secretary of State the sum of twenty dollars, for the State Library Fund, and shall take the official oath as prescribed by law; which oath shall be indorsed on his commission, and shall enter into a bond to the State of Nevada in the sum of two thousand dollars, to be approved by the District Judge of the county for which said Notary Public may be appointed. [As amended March 20, Stats. 1865, p. 407.] **Official oath and bond.**

332. SEC. 3. The bond, together with his oath of office, shall be filed and recorded in the office of the County Recorder of said county. **To be filed.**

333. SEC. 4. Notaries Public shall have authority to demand acceptance and payment of foreign and domestic bills of exchange, and to protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the laws of nations, and according to commercial usages, or by the law of any State, Territory, or country, may be performed by Notaries Public. **Powers and duties.**

Same. 334. SEC. 5. They may also demand acceptance of inland bills of exchange, and payment thereof, and of promissory notes, and may protest the same for non-payment, or non-acceptance, as the case may require.

Same. 335. SEC. 6. Each Notary Public shall have power to take and to certify to the acknowledgment or proof of powers of attorneys, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance, or the instrument of writing executed by any married woman, or to give a certificate of such proof or acknowledgment, which certificate shall be indorsed on the said deed or other instrument, or attached thereto.

Same. 336. SEC. 7. Each Notary Public shall also have power and authority to take depositions and to administer oaths and affirmations in all matters incident or belonging to the duties of his office, and to take affidavits to be used before any Court, Judge, or officer in this Territory.

Record to be kept. 337. SEC. 8. Each Notary Public shall keep a correct record of all his official acts, done and performed by him under and by virtue of the authority conferred by sections four and five of this Act.

Same. 338. SEC. 9. Each Notary Public shall also keep a correct record, wherein he shall enter the name or character of any instrument acknowledged or proved before him, as provided in section six of this Act, together with the date of the same and the parties thereto, as the same appears therein.

Seal. 339. SEC. 10. Each Notary Public shall provide a notarial seal, an impression of which shall be made on his official bond, on which shall be engraved the name of the county for which he is commissioned, and the initials of the Territory, the name of the Notary, and the words "Notary Public," with which he shall authenticate all his official acts, which seal, together with the register and official documents, shall not be liable to be seized on execution.

Certified copy of record. 340. SEC. 11. Each Notary Public, when required, shall give a certified copy of any record in his office to any person upon payment of the legal fees therefor; and any certificate or instrument, either printed or written, purporting to be the official act of a Notary Public, under his seal and signature, shall be received in any Court in this Territory as prima facie evidence of the official character of such instrument, and of the truth of the facts therein set forth.

Protests. 341. SEC. 12. The original protest of a Notary Public under his hand and official seal, of any bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment by him of such bill of exchange or note for acceptance or payment, and the non-acceptance or non-payment thereof, and the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note to whom the same was given, and the Post Office nearest thereto, shall be prima facie evidence of the facts contained therein. The certificate of a Notary Public, drawn from his record, stating the protest and the facts therein contained, shall be evidence of the facts in like manner as the original protest.

342. SEC. 13. For any misconduct or neglect in any of the cases in which any Notary Public appointed under the authority of this Territory, is authorized to act, either by the law of this Territory, or of any State, Territory, or country, or by the law of nations, or by commercial usage, he shall be liable on his official bond to the parties injured thereby, for all the damages sustained; and for any willful violation or neglect of duty, any Notary Public shall be subject to criminal prosecution, and may be punished by fine not exceeding two thousand dollars, and removal from office. **Penalty for neglect of duty.**

343. SEC. 14. If any Notary Public die, resign, be disqualified, or removed from office, or remove from the county for which he is appointed, his records and all his public papers shall, within sixty days, be delivered on demand to the Recorder of the county, whose duty it shall be to demand the same within that time, who shall deliver them to the successor of the said Notary when qualified. **Removal, resignation, etc.**

344. SEC. 15. When the term of office of any Notary Public expires, and his successor is appointed and qualified, he shall deliver his records and public papers to such successor on demand. **Successor.**

345. SEC. 16. Any Notary Public having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor or predecessors could have done. **Certified copies.**

346. SEC. 17. Each Notary Public shall receive such fees for his services as may be allowed by law. **Fees.**

347. SEC. 18. An Act concerning Notaries Public, approved November twenty-ninth, eighteen hundred and sixty-one, is hereby repealed, such repeal to take effect on the first day of March, eighteen hundred and sixty-four, on which day the commissions of the officers appointed under said law shall be revoked, and they shall deliver their records and all their public papers to the Recorder of the county for which they may have been appointed. (a) **Act repealed.**

348. SEC. 3. (b) All acts regularly done of Notaries Public appointed under the Territory of Nevada, and continued in office after the admission of Nevada as a State, are hereby legalized, so far as the same can be done without interfering with vested rights; and such Notaries are hereby continued in office, with like powers as heretofore had, until this Act goes into effect, at which time their terms of office shall be at an end, and such offices shall be deemed vacant. [Act of March 20, Stats. 1865, p. 408.] **Acts legalized.** **Continued in office until Act goes into effect.**

(a) Act repealed, (Stats. 1861, p. 185.)

(b) Secs. 1, 2, are inserted above, in places of amended sections.

CHAPTER XXX.

OF THE WRIT OF HABEAS CORPUS.

SECTION 349. Writ of habeas corpus, who may prosecute for.
350. Application for, how made.
351. Who may grant writ.
352. Must be granted without delay.
353. To whom directed.
354. To whom delivered.
355. How served.
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360. Exception.
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370. Examination of witnesses.
371. Entitled to writ for purpose of giving bail.
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373. May remand to custody.
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375. Disposition of party pending proceedings.
376. Writ not to be disobeyed for defect of form.
377. When discharged not to be again imprisoned; exceptions.
378. Warrant may issue instead of writ.
379. Whom warrant may include.
380. Execution of warrant.
381. Return to and trial.
382. Discharge or remand.
383. When writ may issue.
384. By whom issued; return.
385. Penalty for refusing writ.
386. Penalty for refusing to obey writ.
387. Accessories.
388. Further penalty.

An Act concerning the writ of habeas corpus.

[Approved December 19, 1862, p. 98.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Writ of habeas corpus, who may prosecute for.

349. SECTION 1. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

Application for, how made.

350. SEC. 2. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and shall specify:

First—That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty; the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known.

Second—If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

Third—The petition must be verified by the oath or affirmation of the party making the application.

Who may grant writ.

351. SEC. 3. Such writ of habeas corpus may be granted by any Judge of the Supreme or District Courts, at any time in term or vacation.

Must be granted without delay.

352. SEC. 4. Any Judge empowered to grant a writ applied for under this Act, if it appear that the writ ought to issue, shall grant the same without delay.

To whom directed.

353. SEC. 5. Such writ shall be directed to the officer or party having such person in custody or under restraint, commanding him to have the body of such person, so imprisoned or detained, as it is alleged by the petition, before the Judge, at such time as the Judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his detention, and have then and there such writ.

To whom delivered.

354. SEC. 6. If such writ be directed to the Sheriff or other ministerial officer, it shall be delivered by the Clerk of the Court presided over by the Judge issuing said writ to such officer without delay.

How served

355. SEC. 7. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the Sheriff or his deputy, and shall be by him served upon such person by delivering the same to him without delay.

Same.

356. SEC. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving it at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling house, or the place where the party is confined or under restraint. The

service of said writ is made by serving a copy and exhibiting the original, and, where posting is required, by posting a copy.

Refusal to obey. 357. SEC. 9. If the officer or person to whom such writ is directed refuse, after due service as aforesaid, to obey the same, it shall be the duty of the Judge, upon affidavit, to issue an attachment against such person, directed to the Sheriff, or, if the Sheriff be the defendant, to an Elisor, appointed for the purpose by the Judge, commanding him forthwith to apprehend such person and bring him immediately before such Judge; and upon being so brought he shall be committed to the jail of the county until he make due return of such writ, or be otherwise legally discharged.

Return of. 358. SEC. 10. The party upon whom such writ shall be duly served shall state in his return plainly and unequivocally:

First—Whether he have or have not the party in his custody, or under his power or restraint;

Second—If he have the party in his custody or power, or under his restraint, he shall state the authority and cause of such imprisonment or restraint, setting forth the same at large.

Third—If the party be detained by virtue of any writ, warrant, or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the Judge on the hearing of such return.

Fourth—If the officer or person upon whom such writ shall have been served shall have had the party in his power or custody, or under his restraint, any time prior or subsequent to the date of the writ of habeas corpus, but such officer or person has transferred such custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place.

Fifth—The return must be signed by the person making the same, and, except when such person shall be a sworn public officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

Party in custody to be brought. 359. SEC. 11. If the writ of habeas corpus be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next two sections.

Exception. 360. SEC. 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the Judge, the officer or person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit.

Proceedings in absence of party. 361. SEC. 13. If the Judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such Judge may proceed to decide on such return and to dispose of the matter, as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Hearing of the return. 362. SEC. 14. The Judge before whom a writ of habeas corpus shall be returned shall, immediately after the return thereof, proceed to hear and examine the return, and such other matters as may be properly submitted for his hearing and consideration.

363. SEC. 15. The party brought before the Judge on the return of the writ may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. Pleadings.

364. SEC. 16. Such Judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require. Court to proceed to trial.

365. SEC. 17. Such Judge shall have full power and authority to require and compel the attendance of witnesses by process of subpœna and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case. Witnesses.

366. SEC. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such Judge shall discharge such party from the custody or restraint under which he is held. When party may be discharged.

367. SEC. 19. It shall be the duty of such Judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent Court of criminal jurisdiction, or of any process issued upon such judgment or decree, or in cases of contempt of Court. When remanded.

368. SEC. 20. If it appears on the return of the writ of habeas corpus that the prisoner is in custody by virtue of process from any Court of this Territory, or Judge or officer thereof, such prisoner may be discharged in any one of the following cases, subject to the restrictions of the last preceding section: How discharged when in custody on process.

First—When the jurisdiction of such Court or officer has been exceeded.

Second—When the imprisonment was at first lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged.

Third—When the process is defective in some matter of substance required by law, rendering such process void.

Fourth—When the process, though proper in form, has been issued in a case not allowed by law.

Fifth—When the person having the custody of the prisoner is not the person allowed by law to detain him.

Sixth—Where the process is not authorized by any judgment, order, or decree of any Court, nor by any provision of law.

Seventh—Where a party has been committed on a criminal charge without reasonable or probable cause.

369. SEC. 21. If any person be committed to prison, or be in custody of any officer on any criminal charge, by virtue of any warrant or commitment of a Justice of the Peace, such Not to be discharged from defect of form of warrant.

person shall not be discharged from such imprisonment or custody on the ground of any defect of form in such warrant or commitment.

Examination of witnesses. 370. SEC. 22. If it shall appear to the Judge, by affidavit, or upon hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such Judge, that the party is guilty of a criminal offense, or ought not to be discharged, such Judge, although the charge be defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant, or other necessary witnesses, to be subpœnaed to attend at such time as shall be ordered, to testify before such Judge; and upon the examination, he shall discharge such prisoner, let him to bail, if the offense be bailable, or recommit him to custody, as may be just and legal.

Entitled to writ for purpose of giving bail. 371. SEC. 23. Whenever any person may be imprisoned, or detained in custody, on any criminal charge, for want of bail, such person shall be entitled to a writ of habeas corpus, for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

Recognizance. 372. SEC. 24. Any Judge, before whom any person who has been committed on a criminal charge shall be brought on a writ of habeas corpus, if the same be bailable, may take a recognizance from such person, as in other cases, and shall file the same in the proper Court without delay.

May remand to custody. 373. SEC. 25. If any party brought before the Judge, on the return of the writ, be not entitled to his discharge, and be not bailed where such bail is allowable, such Judge shall remand him to custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was be legally entitled thereto.

Illegal restraint. 374. SEC. 26. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, such Judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Disposition of party pending proceedings 375. SEC. 27. Until judgment be given on the return, the Judge, before whom any party may be brought on such writ, may commit him or her to the custody of the Sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

Writ not to be disobeyed for defect of form. 376. SEC. 28. No writ of habeas corpus shall be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the Judge before whom he is to be brought.

When discharged not to be again imprisoned 377. SEC. 29. No person who has been discharged by the order of the Judge upon a habeas corpus issued pursuant to the provisions of this Act, shall be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

Exceptions *First*—If he shall have been discharged from custody on a criminal charge, and be afterwards committed for the same offense by legal order or process.

Second—If after a discharge for defect of proof, or for any defect of the process, warrant, or commitment, in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offense.

Warrant may issue instead of writ.

378. SEC. 30. Whenever it shall appear by satisfactory proof, by affidavit, to any Judge authorized by law to grant a writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such Judge, before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, said Judge may cause a warrant to be issued, reciting the facts, and directed to the Sheriff or any Constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him or her before such Judge, to be dealt with according to law.

Whom warrant may include.

379. SEC. 31. Such Judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Execution of warrant.

380. SEC. 32. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the Judge who may have directed the issuing of such warrant.

Return to, and trial.

381. SEC. 33. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in the case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial, shall be thereon had as upon the return to a writ of habeas corpus.

Discharge or remand.

382. SEC. 34. If such party be held under illegal restraint or custody, he or she shall be discharged, and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

When writ may issue.

383. SEC. 35. Any writ or process authorized by this Act may be issued and served on the first day of the week, commonly called Sunday, or any other non-judicial day.

By whom issued. Return.

384. SEC. 36. All writs, warrants, processes, and subpœnas, authorized by the provisions of this Act, shall be issued by the Clerk of the Court, and, except subpœnas, sealed with the seal of the Court, and shall be served and returned forthwith, unless the Judge shall specify a particular time for any such return.

Penalty for refusing writ.

385. SEC. 37. If any Judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, he or she shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by an action of debt in any Court having cognizance thereof.

Penalty for refusing to obey writ.

386. SEC. 38. Any person having in his custody or under his restraint or power any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this Act, who, with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or ex-

change the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such Judge, shall be deemed guilty of a misdemeanor, and fined in a sum not exceeding five thousand dollars.

Accessories 387. SEC. 39. Every person who shall knowingly aid or assist in the commission of any offense specified in the last preceding section, shall be deemed guilty of a misdemeanor, and punished as in the last preceding section mentioned.

Further penalty. 388. SEC. 40. Every person convicted of any offense under the provisions of the last two preceding sections, in addition to the punishment therein mentioned. may be also imprisoned in the County Jail for a term not exceeding two years.

Habeas corpus is not the proper remedy to correct errors.—Ex Parte Smith, 2 Nev., p. 338.

HABEAS CORPUS FOR WANT OF SPEEDY TRIAL.—A prisoner charged with a grave offense will not be discharged on habeas corpus on the ground that all efforts to obtain a competent jury at the term at which he was properly triable failed, and that no competent jury can be obtained, until it appears that all possible means of securing a jury have failed, and a trial cannot be had within a reasonable time.—Ex Parte Stanley, 4 Nev., p. 113.

HABEAS CORPUS—RIGHT TO ISSUE WRIT.—A State Court or Judge, duly authorized by the laws of the State, may issue the writ of habeas corpus in any case where a party is imprisoned within its territorial limits, provided it does not appear, when the application is made, that the person imprisoned is in custody under the authority of the United States.—Ex Parte Hill, 5 Nev., p. 154.

DUTY OF OFFICER TO MAKE RETURN TO WRIT.—It is the duty of any person having the custody of a prisoner to make known by a proper return to a Court or Judge issuing a writ of habeas corpus to him, the authority by which he holds such person in custody; and this duty applies to a United States Marshal in response to a writ from a State Court or Judge.—Id.

STATE COURTS NOT TO INTERFERE WITH JURISDICTION OF UNITED STATES COURTS.—In every case where process regular upon its face has been issued from a United States Court having power to issue process of such a nature, the officer, while acting thereunder, is fully protected against any interference from a State Court; and such State Court, when judicially informed of the existence of the process, cannot go behind the same to make any further inquiry.—Id.

PRESUMPTIONS IN FAVOR OF PROCEEDINGS OF UNITED STATES DISTRICT COURT.—A District Court of the United States has the power to find, through its Grand Jury, an indictment for any offense within its jurisdiction; and as to any matter within such jurisdiction, it is not an inferior Court, and the presumptions are in favor of the regularity of its proceedings.—Id.

STATE JURISDICTION ON HABEAS CORPUS AS TO OFFENSES AGAINST THE UNITED STATES.—A State Court or Judge cannot, on habeas corpus, examine or decide whether a particular offense charged in an indictment, found in a United States Court, is or is not an offense against the laws of the United States.—Id.

JUDICIAL NOTICE OF LAWS OF THE UNITED STATES.—State Courts take judicial cognizance of the laws of the United States without formal proof of them, and are bound thereby.—Id.

Sec. 10 of the Habeas Corpus Act, which prescribes what return shall be made to the writ, does not confine the party or officer making that return (and admitting he has the person named in the writ in his custody), to what is prescribed in either the second or third subdivision of that section, but his return may embrace matters mentioned in both subdivisions.—Ex Parte Salge, 1 Nev., p. 449.

CHAPTER XXXI.

OF PROCEEDINGS UPON QUO WARRANTO.

SECTION 389. Against whom information may be filed.
390. By whom filed.
391. Must file when directed.
392. Information, what to consist of.
393. Summons, how issued and served.
394. Defendant may appear and answer.
395. Information, what to set forth in certain cases.
396. When claimant to exercise functions of office.
397. Defendant to deliver over books and papers.
398. Claimant may recover damages.
399. Information may be filed.
400. Judgment, how to be rendered in certain cases.
401. Judgment shall be the same as above.
402. Information against private individuals; costs, how regulated.
403. Costs, how collected.
404. Court shall appoint Trustee.
405. Trustee to enter into bond.
406. When suit may be brought on bond.
407. Duty of Trustee.
408. Court to order books and papers to be delivered to Trustee.
409. Trustee to file inventory.
410. Trustee to sue for and recover debts.
411. Directors and officers, when liable.
412. Penalty for refusing to obey order.

SECTION 413. Duty of Prosecuting Attorney.
414. Proceedings to have precedence.
415. Services of Prosecuting Attorney.

An Act regulating proceedings upon quo warranto and information in the nature thereof.

[Approved February 21, 1865, p. 164.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Against whom information may be filed.

389. SECTION 1. An information may be filed against any person unlawfully holding or exercising any public office or franchise within this State, or any office in any corporation created by the laws of this State, or the laws of the late Territory of Nevada; or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation within this State without being authorized by law; or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

By whom filed.

390. SEC. 2. Such information may be filed by the Prosecuting or District Attorney of the proper county, whenever he deems it his duty so to do, or an occasion therefor arises.

Must file when directed.

391. SEC. 3. He must file such information when directed to do so by the Governor, the Legislature, the District Court, or the County Commissioners.

Information, what to consist of.

392. SEC. 4. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the Court, which shall stand for an original complaint.

Summons, how issued and served.

393. SEC. 5. Such statement shall be filed in the Clerk's office, and summons issued and served in the same manner as provided for the commencement of civil actions in the District Court.

Defendant may appear and answer

394. SEC. 6. The defendants may appear and answer such information in the usual way as in civil actions; and, issue being joined, the case shall be tried in the same manner as civil actions, as nearly as may be.

Information, what to set forth in certain cases.

395. SEC. 7. When the defendant is holding an office to which another is claiming the right, the information shall set forth the name of such claimant, and the trial must, if practicable, determine the rights of the contesting parties.

When claimant to exercise functions of office.

396. SEC. 8. If judgment be rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law.

Defendant to deliver over books and papers.

397. SEC. 9. The Court, after such judgment, shall order the defendant to deliver over all books and papers in his custody, or under his control, belonging to said office, to the parties entitled thereto.

Claimant may recover damages.

398. SEC. 10. When the judgment has been rendered in favor of the claimant, he may, at any time within one year

thereafter, bring suit against the defendant, and recover the damages he has sustained by reason of the act of the defendant.

399. SEC. 11. When several persons claim to be entitled to the same office or franchise, an information may be filed against any or all of said persons, in order to try their respective rights thereto.

Information may be filed.

400. SEC. 12. If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege; or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding.

Judgment, how to be rendered in certain cases.

401. SEC. 13. If the defendant be found to have exercised merely certain individual powers and privileges to which he is not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges.

Judgment shall be the same as above.

402. SEC. 14. An information may be upon the relation of a private individual, and when upon the relation of a private individual, it shall be so stated in the complaint and proceedings, and such individual shall be responsible for costs, in case they are not adjudged against the defendant. In other respects, the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

Information against private individuals

Costs, how regulated.

403. SEC. 15. In case judgment is rendered against a pretended, but not real, corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

Costs, how collected.

404. SEC. 16. If a corporation is ousted and dissolved by the proceedings herein authorized, the Court shall appoint some disinterested person as Trustee of the creditors and stockholders, who shall receive a compensation for his services to be fixed by the Court.

Court shall appoint Trustee.

405. SEC. 17. Said Trustee shall enter into bond in such a penalty, and with such security, as the Court approves, conditioned for the faithful discharge of his duties.

Trustee to enter into bond.

406. SEC. 18. Suit may be brought on such bond by any person injured by the negligence or wrongful act of the Trustee in the discharge of his duties.

When suit may be brought on bond.

407. SEC. 19. The Trustee shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

Duty of Trustee.

408. SEC. 20. The Court shall, upon an application for that purpose, order an officer of such corporation, or any other person having possession of any of the effects, books, or papers of the corporation, in anywise necessary for the settlement of its affairs, to deliver the same to the Trustee.

Court to order books and papers to be delivered to Trustee.

409. SEC. 21. As soon as practicable after his appointment, the Trustee shall make and file in the office of the Clerk of the Court, an inventory of all the effects, rights, and credits, which come to his possession or knowledge, the truth of which inventory shall be sworn to.

Trustee to file inventory.

Trustee to sue for and recover debts.

410. SEC. 22. He shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders respectively, to the extent of the effects which come into his hands, in the same manner as though he was the executor of a deceased person.

Directors and officers when liable

411. SEC. 23. When judgment of ouster is rendered against a corporation on account of the misconduct of the Directors, or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

Penalty for refusing to obey order.

412. SEC. 24. Any person who, without good reason, refuses to obey an order of the Court, as herein provided, shall be deemed guilty of a contempt of Court, and shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the County Jail until he comply with said order, and shall be further liable for the damages resulting to any person on account of his refusal to obey such order.

Duty of Prosecuting Attorney.

413. SEC. 25. It is made the duty of the several Prosecuting or District Attorneys in this State to be diligent in their endeavors to carry out the provisions of this Act, and in ascertaining if any cause exist for instituting such proceedings as are herein provided for.

Proceedings to have precedence.

414. SEC. 26. All proceedings under this Act shall have precedence over all other cases, in order and time of trial, except criminal actions, and shall be placed upon the calendar for trial immediately upon issue being joined, whether in law or in fact.

Services of Prosecuting Attorney.

415. SEC. 27. When judgment is against the defendant, the Court shall allow to the Prosecuting or District Attorney such sum of money as may seem reasonable for his services; which sum shall be taxed with and collected as the other costs in the proceeding; unless judgment is rendered against the defendant no costs shall be allowed, except as provided for in section fourteen of this Act. (a)

(a) Actions for the usurpation of an office or franchise, see Sec. 1381, post, et seq. Contesting election, etc., Sec. 2540, et seq.

CHAPTER XXXII.

OF THE RELIEF OF PERSONS IMPRISONED ON CIVIL PROCESS.

SECTION 416. Persons confined on civil process may be released.
417. Application for release.
418. Notice to be served on plaintiff.
419. Examination of prisoner.
420. Oath required before discharge.
421. Order of discharge.
422. Renewal of application.

SECTION 423. Discharge does not vitiate judgment.
424. Plaintiff may order discharge.
425. Creditor to pay expenses of imprisonment.

An Act for the relief of persons imprisoned on civil process. ([a])

[Approved December 19, 1862, p. 95.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

416. SECTION 1. Every person confined in jail on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified. **Persons confined on civil process may be released.**

417. SEC. 2. Such person shall cause a notice, in writing, to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to the District or Probate Judge of the county in which such person may be confined for the purpose of obtaining a discharge from his imprisonment. **Application for release.**

418. SEC. 3. Such notice shall be served upon the plaintiff, or his agent or attorney, one day at least before the hearing of the application. If the plaintiff be not a resident of the county, and have no agent or attorney in the county, no such notice need be served. **Notice to be served on plaintiff.**

419. SEC. 4. At the time and place specified in the notice, such person shall be taken before such Judge, who shall examine him, under oath, concerning his estate, and property, and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed, and such Judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditors. **Examination of prisoner.**

420. SEC. 5. If, upon examination, the Judge be satisfied that the prisoner is entitled to his discharge, such Judge shall administer to him the following oath: **Oath required before discharge.**

"I, ——, do solemnly swear, or affirm, that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of with design to secure the same to my use, or to defraud my creditors."

421. SEC. 6. After administering the oath, the Judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause; and the officer, upon service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause. **Order of discharge.**

422. SEC. 7. If such Judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceeding shall thereupon be had. **Renewal of application**

423. SEC. 8. The prisoner, after being so discharged, shall be forever exempt from arrest and imprisonment for the same debt; but the judgment against him shall remain in full force against any estate, present or future, of the prisoner, not exempt from execution. **Discharge does not vitiate judgment.**

Plaintiff may order discharge.

424. SEC. 9. The plaintiff in the action may, at any time, order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

Creditor to pay expenses of imprisonment.

425. SEC. 10. Whenever a person is committed to jail on a judgment recovered in a civil action, the creditor, his agent, or attorney, shall advance to the Jailor immediately upon such commitment, sufficient money to pay for the support of said prisoner for at least two weeks, at the rate of two dollars and a half per day, and in case the money should not be so advanced, the Jailor shall forthwith discharge such prisoner from custody, and such discharge shall be a bar against imprisonment for the same debt. At the expiration of such two weeks, should such creditor refuse to advance a like sum, the prisoner will be discharged, as above provided, and with the same effect.

(a) For Arrest and Bail, see Sec. 1135, et seq., post.

CHAPTER XXXIII.

OF THE RELIEF OF INSOLVENT DEBTORS.

SECTION 426. Discharge of insolvent.
427. Insolvent to petition.
428. Schedule.
429. Same.
430. Judge to make order.
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433. Meeting of creditors; notice to be published.
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438. Duty of assignees in selling property.
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444. Fees of assignees; counsel fees.
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454. Debtor may be debarred.
455. Debtor may be denied benefit of Act.
456. Presentation of petition.
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460. Non-resident creditors.
461. When property of insolvent does not amount to more than one third of debts; proceedings.
462. Assets to be delivered to assignees.
463. Assignees to make out a true account of disbursements under oath.
464. Assignments, when void as against creditors.

An Act for the relief of insolvent debtors and protection of creditors.

[Approved March 10, 1865, p. 369.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

426. SECTION 1. Every insolvent debtor may be discharged from his debts, as hereinafter provided, upon executing an assignment of all his property, real, personal, or mixed, for the benefit of all his creditors, and upon compliance with the several provisions of this Act; *provided*, said assignment be made bona fide, and without fraud. The District Court only shall have jurisdiction in the subject matter herein contained. Discharge of insolvent

427. SEC. 2. Such insolvent debtor shall petition the Judge having jurisdiction within the place of his domicile, or usual residence, which petition shall briefly state the circumstances which compel him to surrender his property to his creditors, and shall conclude with a prayer to make a cession of his estate, and to be discharged from his debts, in pursuance with the provisions of this Act. Insolvent to petition.

428. SEC. 3. The debtor shall annex to said petition his schedule, that is to say, a summary statement of his affairs, with a list of losses he may have sustained, giving the name of his creditors, if known, the amount due to each creditor, and the cause and nature of such indebtedness, and when it accrued, and a statement of any existing judgment, mortgage, collateral, or other securities for the payment of any such debt. Said schedule shall also contain a full, complete, and perfect inventory of all his property, real, personal, and mixed, of all choses in action, debts due or to become due, and all moneys in hand of such insolvent. Said schedule shall also contain a full statement of all incumbrances existing upon the property of the insolvent. The said debtor shall, as nearly as possible, estimate the property by him surrendered, and set forth in the schedule at its true cash value. Schedule.

429. SEC. 4. The said schedule shall be signed by the debtor, and be by him sworn to before the Judge having jurisdiction of the failure, in the following words, to wit: "I, A. B., do, in the

Same. presence of Almighty God, truly and solemnly swear, that the schedule now delivered by me doth contain a full, perfect, and true discovery of all the estate, real, personal, and mixed, goods and effects to me in any way belonging, all such debts as are to me owing, or to any person or persons in trust for me, and all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me, or to my use, or to any other person or persons in trust for me; that I have no lands, money, stock, or estate, reversion or expectancy, beside that set forth in my schedule; that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed; that I have not, directly nor indirectly, sold, or otherwise disposed of in trust, or concealed, any part of my property, effects, or contracts; that I have not in any way compounded with my creditors, whereby to secure the same, or to receive or to expect any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted in any manner whatsoever. So help me God."

Judge to make order. 430. SEC. 5. The Judge receiving such petition, schedule, and affidavit, shall make an order requiring all the creditors of such insolvent to show cause, if they can, why an assignment of the insolvent estate should not be made, and he be discharged from his debts; said schedule being signed and sworn to by the petitioner, the Judge shall certify the same and cause it to be filed in the office of the Clerk of the Court, in the county where the assignment was made, there to remain for the information of the creditors.

The homestead. 431. SEC. 6. The insolvent debtor, on the surrender of his property, shall include and set forth in his schedule, his whole estate, and all such property as may be by law exempt on execution from seizure and forced sale; and it shall be the duty of the Judge having jurisdiction of the failure to exempt and set apart, for the use and benefit of said insolvent, such real and personal property as he is by law authorized to retain to his own use or that of his family.

Duty of insolvent. 432. SEC. 7. The insolvent shall, either before or on the day appointed for the meeting of the creditors, deliver to the Court all the commercial or other books he may have kept, which books shall be deposited in the Clerk's office of said Court; said insolvent shall also deliver to the Court, at the same time, all vouchers, notes, bonds, bills, securities, or other evidences of debt, in any manner relating to or having any bearing upon or connection with the property surrendered by said debtor, and all such papers or securities shall be deposited in the Clerk's office of said Court, and the Clerk shall hand them over, together with the books of the insolvent, to the assignees who may be appointed.

Meeting of creditors. 433. SEC. 8. The Judge granting the order for a meeting of the creditors, shall direct the Clerk of the Court to issue a notice calling the creditors of the insolvent to be and appear on a day not less than thirty days from the date of publication of said notice, before said Judge, at chambers or in open Court, to show cause why the prayer of said insolvent should not be granted. Notice to be published. Said notice shall be published at least thirty days in a newspaper printed in the county in which application is made, if there be one; if there be none, then in a newspaper published nearest to the county seat in an adjoining county. (As amended March 2, Stats. 1867, p. 72.)

Stay of proceedings

434. SEC. 9. When issuing the order for the meeting of creditors, the Judge shall order that all proceedings against the debtor shall be stayed; *provided, however*, that the said stay of proceedings shall not prevent the Judge, who shall have granted it, from appointing a receiver to take possession of all property of the debtor for the benefit of all his creditors, if one or more of his creditors, his agent, or attorney in fact, shall apply for such appointment, and swear that he has reason to believe, and does believe, that the debtor may avail himself of the stay of proceedings and keep his property from his creditors, if no cause sufficient, in the judgment of the Court, shall have been shown why the debtor should not have the benefit of this Act, and shall produce satisfactory proof of the facts on which his affidavit is founded.

Assignees, appointment of.

435. SEC. 10. At the meeting of creditors, the said creditors having certified on oath that their respective claims are legitimate and true, shall proceed to the appointment of one or more assignees, not exceeding three. In appointing assignees, the opinion of the majority of said creditors in sums or in claims shall prevail. At such meeting any creditor may be represented by his duly authorized agent or attorney in fact.

Duty of assignees.

436. SEC. 11. When the assignee or assignees shall have been duly appointed in the meeting of creditors, and the surrender of the property shall have been duly accepted of, it shall be the duty of said assignees to deposit in the Clerk's office of the Court who shall have issued the order for a call of the creditors, a certified statement of the deliberations of said creditors on the appointment of said assignees.

Bonds of assignees.

437. SEC. 12. The Judge shall require from the assignees a bond, with one or more good and sufficient sureties, on which bond the parties therein shall be liable jointly and severally for the amount thereof, conditioned for the faithful performance of the duties devolving upon said assignees. The amount of such bond shall be determined by the majority of creditors. Should not the creditors so determine, the amount of said bond shall be fixed by the Court having jurisdiction of the failure.

Duty of assignees in selling property.

438. SEC. 13. The assignees shall apply by petition to the Court who shall have ordered a meeting of creditors, to be authorized to sell at public auction, and to the best and highest bidder, for cash, all the insolvent debtor's property, of whatsoever nature or kind, and said assignee shall give at least twenty days public notice, in the same manner as notice for a meeting of creditors, of all sales of the property of said insolvent, giving at the same time a full description of the property to be disposed of; *provided, however*, that if any of the property surrendered be of a perishable nature, the assignee shall be authorized to sell the same, on giving at least five days notice of such sale, by publication or notice of such sale, as in sale on execution.

Their responsibilities.

439. SEC. 14. The assignees shall deposit all funds belonging to the failure in their joint names, so that nothing can be drawn without the consent of all. Said funds shall remain inviolable,

and shall never be loaned, used, or mixed with the personal affairs of the assignees, and, finally, the assignees shall make a distribution of the proceeds of the property of the insolvent, agreeably to the direction of the Court. Said assignees may sue and be sued, either as plaintiffs or defendants, in everything which respects the rights and actions which may belong to the insolvent, or which may belong to the insolvents, or which may concern the mass of the creditors. All suits brought against the insolvent, anterior to his surrender of property, before the Courts of other counties, shall be transferred to the Court having jurisdiction in the county in which said insolvent shall have presented his schedule, and may be continued on motion and notice against his assignees.

Dividends. 440. SEC. 15. Whenever a dividend shall be declared, the assignee shall make out a statement containing the names of the several creditors, mentioning the sums which are due them respectively, and the said statement shall besides contain the pro rata sums to be divided among all the creditors; said assignees shall deposit said statement in the Clerk's office of the Court, who shall order that notice be given to the creditors, in the same manner as for the meeting, that they show cause, within fifteen days next following the publication, why the said statement should not be accepted, and the distribution made agreeable to its contents.

Investigation of creditors. 441. SEC. 16. Two or more creditors may, at any time, make a motion to know if the assignees have funds in their hands, and the said assignees shall be required to present their accounts, and if they have funds, they shall distribute them without delay.

Penalties of assignees. 442. SEC. 17. Should the assignees refuse or neglect to render their accounts, as required by the preceding section, or to pay over a dividend when they shall have, in the opinion of the Court, sufficient funds for that purpose in their hands, the Court shall immediately discharge such assignees from their trust, and shall have power to appoint others in their place. The assignees so discharged shall deliver to those appointed by the Court all the funds, property, books, vouchers, and securities belonging to the insolvent, without charging any commission or expenses thereon, and shall also be condemned to pay to the new assignees for the benefit of the mass of the creditors, twenty per cent in addition to the amount of funds in their hands.

Refusal to appoint assignees. 443. SEC. 18. If on the day appointed for the meeting the creditors, although duly summoned, do not attend, or refuse to appoint one or more assignees, it shall be lawful for the Judge, before whom the said meeting may take place, to authorize the Sheriff of the county to receive the surrender of property offered by the debtor, and to perform in every respect the functions of assignee, and for the faithful performance of said trust he shall be responsible on his official bond; *provided*, that if any of the creditors should choose to take that charge, the Judge shall appoint said creditor for that purpose, upon said creditor giving bond, with good and sufficient security, proportioned to the value of the property committed to his charge.

444. SEC. 19. The assignees, collectively, shall be entitled to charge and receive for their services, to wit: Ten per centum

upon a sum not exceeding ten thousand dollars; eight per centum upon sums above ten thousand dollars and not exceeding thirty thousand dollars; six per centum upon sums above thirty thousand dollars and not exceeding sixty thousand dollars; and four per centum upon all sums exceeding sixty thousand dollars; *provided,* that said commission be allowed only on such net sums of money as shall actually come to their hands, or be distributed by them; the mass of creditors shall in no manner be liable for fees of counsel of the insolvent debtor in conducting the surrender of the property. **Fees of assignees.** **Counsel fees.**

445. SEC. 20. That in case, after the appointment of said assignees, any one of the creditors of the insolvent debtor should deem necessary to oppose it, on the ground of some fraud having been committed by the said insolvent debtor, or of the appointment not having been legally made, he shall, within ten days next following the appointment of said assignees, lay before the Court which has already taken cognizance of the case, his written opposition, stating specially the several facts of nullity of the said appointment, or of fraud by him alleged against the insolvent debtor; whereupon, in case of accusation of fraud, after having received the said insolvent debtor's answer, the Court shall order a jury to be summoned of not less than six men, to be summoned in the same manner as juries are summoned in the District Court, for the purpose of deciding on the said accusation. **Fraud.**

446. SEC. 21. On the day, or at the term, appointed in such order, or any subsequent day or term, the Court shall proceed to hear the proofs and allegations of the parties; and before any other proceedings be had, shall require proof of the publication of the notice, as herein provided. **Proof of fraud.**

447. SEC. 22. Upon such accusation of fraud, the creditor who shall have brought the same shall have the right to interrogate the insolvent debtor on oath, and put to him such written questions as to the state of his affairs, and the several transactions in which he may have been engaged anterior to his failure, as he shall think proper; and the insolvent shall answer in writing to the said interrogations, in a pertinent and distinct manner, and every equivocal answer on his part shall be construed against him. **Rights of creditors.**

448. SEC. 23. If the jury summoned for the purpose of deciding on the accusation of fraud brought against such insolvent debtor declare in their verdict that said insolvent has been guilty of fraud, the said debtor shall forever be deprived of the benefit of the laws passed for the relief of insolvent debtors in this State. **Penalty.**

449. SEC. 24. If the accusation of fraud brought against the debtor is declared to be ill-founded, or if there be no opposition to the surrender of his property, and, *provided,* said surrender has been made according to the provision of this Act, said debtor shall be released and fully discharged from any and all debts until then contracted, and contracted after the passage of this Act, and from any judicial proceeding relative to the same; *provided, always,* that said insolvent debtor shall be released and discharged only from such debts and liabilities as he shall have set forth and named in his schedule. **Insolvent to be released.**

Penalty for fraud.

450. SEC. 25. Any insolvent debtor who shall be found guilty of fraud as aforesaid, shall forever be deemed incapable of holding any office of trust or profit under the government of this State; shall moreover be liable to be prosecuted and punished as a perjurer, if he should be convicted of having forsworn himself in any of the declarations he may have made, agreeably to the provisions of this Act; and if convicted of fraud he shall be sentenced by the Court to suffer imprisonment at hard labor in the State Prison, for a term not less than six months nor more than two years.

Powers of Judge.

451. SEC. 26. If the Judge before whom the accusation of fraud is brought, or an opposition to the appointment of assignees is made, thinks that the interest of the mass of creditors of the insolvent may suffer by a delay of the approval of the appointment of the assignees, it shall be lawful for said Judge, all opposition notwithstanding, to approve previously the said appointment, if he finds that it has been made agreeably to law.

Fraudulent bankrupts.

452. SEC. 27. That all persons shall be considered as fraudulent bankrupts who shall be convicted of having concealed their property with the intention to keep it from their creditors, as also those who shall be convicted of having concealed or altered their books or papers with the same intention.

Same.

453. SEC. 28. That every insolvent debtor shall also be considered as a fraudulent bankrupt who shall be convicted of having passed sham deeds for the purpose of conveying the whole or any part of his property, and depriving his creditors thereof; or of having knowingly omitted to declare any of his property rights or claims in his schedule; or of having purloined his books, or any of them; or of having altered, changed, or made them anew, to an intent to defraud his creditors; or of having alienated, mortgaged, or pledged any of his property; or of having committed any other kind of fraud to the prejudice of his creditors.

Debtor may be debarred.

454. SEC. 29. If any debtor shall be convicted of having, at any time within three months next preceding his failure, sold, engaged, or mortgaged any of his goods and effects, or of having otherwise assigned, transferred, or disposed of the same, or any part thereof; or confessed judgment in order to give a preference to one or more of his creditors over the others, whereby to receive any advantage in anticipation of his failure, to the prejudice of his creditors, he shall be debarred the benefit of this Act.

Debtor may be denied benefit of Act.

455. SEC. 30. All insolvent debtors owing, or accountable in any manner, for public funds, or property, of whatever nature or kind; all unfaithful depositaries; all such as refuse or neglect to pay up all funds received by them as bankers, brokers, commission merchants, or for money, goods or effects received by them in a fiduciary capacity, shall be denied the benefits of this Act.

Presentation of petition.

456. SEC. 31. If, after the presentation of his petition, the insolvent shall sell, or in any manner transfer or assign any of his property, or collect any debts due him, and shall not give a just and true account of the property so sold or transferred, and the moneys so collected, and pay the same over to the assignees,

within ten days after their appointment, said debtor shall not receive the benefit of this Act.

457. SEC. 32. Whenever any insolvent debtor has had the benefit of this Act, if thereafter, at any time, it is made to appear that he has concealed any part of his property or estate, or given a false schedule, or committed any fraud under the provisions of this Act, it is hereby declared that he has forfeited all benefit and advantage which he would otherwise have had by virtue of this Act, and he cannot avail himself of any of its provisions in bar to any claim that may be instituted against him. **Concealing property.**

458. SEC. 33. No person can apply for or receive the benefit of this Act, through an agent or attorney in fact. **To apply in person.**

459. SEC. 34. From and after the surrender of the property of the insolvent debtor, all property of such insolvent shall be fully vested in his assignee or assignees, for the benefit of his creditors, and shall not be liable to be seized, attached, taken, or levied on, by virtue of any execution issued against the property of said insolvent, and the assignees who may be appointed shall take possession of and be entitled to claim and recover all the said property, and to administer and sell the same as herein provided. **Surrender of property.**

460. SEC. 35. If there be any creditors residing without the limits of this State, the Judge shall appoint an attorney to represent them, but the fees of said attorney shall in no case be paid by the mass of the creditors, but shall be levied on the amount of the sums which shall be recovered for the account of such non-resident creditors, at the rate of ten per centum; *provided*, that in no case shall the whole fees allowed to counsel appointed on behalf of said creditors exceed the sum of ($350) three hundred and fifty dollars. **Non-resident creditors.**

461. SEC. 36. In case the debtor who applies for the benefit of this Act should have no property to surrender to his creditors, or if the appraised value of the property exhibited in his schedule should not amount to more than one third of his debts, in case he should already have received the benefit of this Act during the year next preceding, the Judge before whom application is made shall not admit him to the benefit of this law, unless it be proven to the said Judge, by affidavit, sworn and subscribed to by two creditable and disinterested witnesses, that the debtor has really experienced the losses by him stated, and that the said losses may have reduced him to the situation in which he finds himself; *provided*, all legal mortgages and liens bona fide existing on such property, at the time of the surrender as aforesaid, shall remain good and valid, and may be enforced in the same manner as though no such surrender had been made. **When property of insolvent does not amount to more than one third of debts.** **Proceedings.**

462. SEC. 37. All the goods, titles, and claims, which the insolvent debtor shall have declared in his schedule, shall be delivered up to the assignees as soon as they shall have been appointed; and in case the debtor should refuse to deliver up the goods, titles, effects, or estate in his possession, the Judge shall oblige to that delivery, either by ordering the Sheriff to **Assets to be delivered to assignees**

seize the said property, to be by him delivered up to the assignees, or causing the said insolvent to be imprisoned until the said delivery shall be effected.

Assignees to make out a true account of disbursements under oath.

463. SEC. 38. The assignee or assignees appointed under this Act shall make out a true account of all disbursements made by them in discharge of their duties as assignee or assignees, which shall be verified by the oath of such assignee or assignees, and shall deliver the same to the Judge having jurisdiction of the subject matter, and such Judge shall, in writing, certify such part or parts of the same, as he shall deem to be just and necessarily expended by said assignee or assignees in the discharge of their duty, which amount so allowed shall be paid out of the property of such insolvent debtor.

Assignments, when void as against creditors.

464. SEC. 39. No assignment of any insolvent debtor, otherwise than is provided in this Act, shall be legal or binding upon creditors.

CHAPTER XXXIV.

OF THE RELEASE OF JOINT DEBTORS.

SECTION 465. Joint debtor may be released from liability.
466. Released debtor not necessary to action.
467. Credit to be made on judgment.

An Act concerning the liabilities of joint debtors.

[Approved February 15, 1866, p. 67.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Joint debtor may be released from liability.

465. SECTION 1. Any one of two or more joint debtors, or parties jointly, or jointly and severally, bound by any contract or judgment, may be released from his, her, or its liability upon such contract or judgment by the creditor or creditors, and such release shall not operate, nor be held to operate, in law as a release to the other debtor or debtors upon such contract or judgment, except as to the released debtor's proportion of such liability or debt, estimated upon the basis of the number of such debtors; but such release shall operate only as a release of all liability of such debtor to the creditor in such contract or judgment, and as a credit upon the same of such proportionate sum as herein provided.

Released debtor not necessary to action.

466. SEC. 2. It shall not be necessary to make the party released, as provided in the foregoing section, a party to any action upon such contract, but the creditor or creditors aforesaid may pursue the remaining debtors for the remaining portion of such debt, the same as though no such release had been made.

467. SEC. 3. In case a release as aforesaid be made to any judgment debtor by the judgment creditor, the Judge or Justice shall order the proper credit, as aforesaid, made upon such judgment, and that such debtor be released from liability upon the same. Credit to be made on judgment.

CHAPTER XXXV.

OF LIMITED PARTNERSHIPS.

SECTION 468. Limited partnersnips.
469. Responsibilities of partners.
470. Certificate to be made setting forth name and general terms of business, etc.
471. Certificate to be acknowledged and recorded.
472. Certificate to be published.
473. Renewal of partnerships.
474. General partners; special partners.
475. Capital stock; debts.
476. Assignment in case of insolvency.
477. Publication of assignment.
478. Suits.
479. Dissolution of partnership.
480. Liability and rights of partners.

An Act to authorize the formation of limited partnerships.

[Approved December 19, 1862, p. 55.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

468. SECTION 1. Limited partnerships, for the transaction of mercantile, mechanical, mining, or manufacturing business, within this Territory, may be formed by two or more persons upon the terms and subject to the conditions and liabilities prescribed in this Act; but nothing contained in this Act shall authorize such partnerships for the purpose of banking or insurance. Limited partnerships.

469. SEC. 2. The said partnerships may consist of one or more persons, who shall be called general partners, who shall be jointly and severally responsible as general partners are by law, and of one or more persons who shall contribute to the common stock a specific sum, in actual cash payment, as capital, who shall be called special partners, and who shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned. Responsibilities of partners.

470. SEC. 3. The persons forming such partnerships shall make and severally sign a certificate, which shall contain the

Certificate to be made setting forth name and general terms of business, etc.

name or firm under which said partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted, and the time when the partnership is to commence and when it is to terminate.

Certificate to be acknowledged and recorded.

471. SEC. 4. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the partners before some officer authorized to take acknowledgment of deeds, and recorded in the office of the Recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different counties, a copy of the certificate, certified by the Recorder in whose office it shall be recorded, shall be filed and recorded in like manner in the office of the Recorder in every such county. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable, as general partners, for all the engagements thereof.

Certificate to be published.

472. SEC. 5. The partners shall, for three successive weeks immediately after such registry, publish a copy of the certificate above mentioned in a newspaper printed in the county where their principal place of business is situated; and if no such paper be there printed, then in a newspaper in the Territory nearest thereto; and in case such publication be not so made, the partnership shall be deemed general.

Renewal of partnerships.

473. SEC. 6. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded, and published, in like manner as is provided in this Act for the original formation of limited partnerships, and every such partnership which shall not be renewed in conformity with the provisions of this section, shall be deemed a general partnership.

General partners.

474. SEC. 7. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, and the general partners only shall transact the business. If the name of any special partner shall be used in said firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership with any person except the general partner, he shall be deemed and treated as a general partner.

Special partners.

Capital stock.

475. SEC. 8. During the continuance of any partnership, under the provisions of this Act, no part of the capital stock thereof shall be withdrawn, nor any division of interests or profits be made so as to reduce such capital stock below the sum stated in the certificate before mentioned. If at any time during the continuance or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

Debts.

476. SEC. 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid unless it provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims. **Assignment in case of insolvency.**

477. SEC. 10. In case of such assignment, as provided for in the preceding section, the assent of the creditors shall be presumed, unless, within sixty days after notice thereof, they shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper printed in the county where the place of business of the party making it is situated; or if no newspaper be printed in such county, then in some newspaper printed in the Territory nearest thereto, within fourteen days after the making such assignment. **Publication of assignment.**

478. SEC. 11. All suits respecting the business of such partnerships shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this Act that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such suits; and excepting, also, those cases where special partners shall be held severally responsible on account of any sums by them received or withdrawn from the common stock, as before provided. **Suits.**

479. SEC. 12. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the Recorder's office in which the original certificate, or the certificate of renewal or continuation of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificates of the formation of such partnerships were published, according to the provisions of this Act; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper in this Territory nearest thereto. **Dissolution of partnerships.**

480. SEC. 13. In all cases not otherwise provided for in this Act, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners. **Liability and rights of partners.**

CHAPTER XXXVI.

OF THE ESTATES OF DECEASED PERSONS.

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506. Wills proved in other States valid here, when.
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509. Same.
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514. Effect of revocation.
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An Act to regulate the settlement of the estates of deceased persons.

[Approved November 29, 1861, p. 186.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

I.—JURISDICTION.

481. SECTION 1. Wills shall be proved, and letters testamentary, or of administration, shall be granted: First—In the county of which the deceased was a resident, at or immediately previous to his death, in whatever place his death may have happened. Second—In the county in which he may have died, leaving estate therein, and not being a resident of the Territory. Third—In the county in which any part of his estate may be, he having died out of the Territory, and not being a resident thereof at the time of his death. Fourth—In the county in which any part of his estate may be, he not being a resident of the Territory, and not leaving estate in the county in which he died. Fifth—In all other cases, in the county where application shall first be made. (a) **Territorial jurisdiction**

(a) Jurisdiction of District Courts relative to the probate of wills and to the estate of deceased persons, Secs. 934 and 935, post.

482. SEC. 2. When the estate of the deceased is in more than one county, he having died out of the Territory and not having been a resident thereof at the time of his death, or, being such non-resident, and dying within the Territory, and not leaving estate in the county where he died, the Probate Court of that county in which application is first made for letters testamentary or of administration, shall have exclusive jurisdiction of the settlement of the estate. **Of estates of non-residents.**

II.—PROOF OF WILLS.

483. SEC. 3. Any person having the custody of any will, shall, within thirty days after he shall have knowledge of the death of the testator, deliver it into the Probate Court which has jurisdiction of the case, or to the person named in the will as executor. **Wills to be delivered to Court.**

484. SEC. 4. Any person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the Probate Court. **Same, by person named as executor.**

Renunciation of trust

485. SEC. 5. If he intends to decline the trust, he shall, at the same time, file his renunciation in writing. If he shall neglect, for ten days, to file his renunciation, such neglect shall be equivalent to a renunciation, unless, for cause shown, the Probate Court, or Judge, shall extend the time. If he intends to accept, he shall present, with the will, a petition setting forth the facts necessary to give jurisdiction, and, when the same are known, the names, ages, and residence of the heirs and devisees of the deceased, and the probable value and character of the property of the estate, and praying that the will be admitted to probate, and that letters testamentary be issued to him. If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterwards proved, in the course of the administration, the probate of the will and the subsequent proceedings shall not, on account of such want of jurisdictional averments, be held void.

Petition setting forth jurisdictional facts.

Liability for neglect.

486. SEC. 6. Every person who shall neglect to perform any of the duties required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will for the damages they may sustain in consequence of such neglect.

Petition for probate by person named as executor.

487. SEC. 7. Any person named as executor in a will, though the will is not in his possession, may present his petition to the Probate Court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him.

By person having interest in.

488. SEC. 8. Any person, having an interest in the will, may, in like manner, present a petition, praying that it may be required to be produced and admitted to probate.

Order for production of will.

489. SEC. 9. If it be alleged in any petition that any will is in the possession of a third person, and the Court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring him to produce it at a time to be named in the order.

Penalty for disobeying.

490. SEC. 10. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the Court, be committed to the jail of the county, and be kept in close confinement until he shall produce the will.

Application for probate.

491. SEC. 11. Applications for the probate of a will, and for the issuance of letters, may be made to the Probate Judge out of term time, or at chambers; and he may also, out of term time, or at chambers, issue all necessary orders and writs to enforce the production of any will. He may also appoint a special term for the hearing of any such application.

Time for proving will, notice of.

492. SEC. 12. When any will shall have come into the possession of the Probate Court, and a petition for the probate thereof, and for the issuance of letters testamentary, or letters of administration with the will annexed, shall have been filed, the Court, or Judge, shall appoint a time for proving it, which shall not be less than ten nor more than thirty days, and shall cause notice to be given thereof by the Clerk, by publication in some newspaper, if there is one printed in the county, if not, then by notices posted in three public places in the county.

493. SEC. 13. If the heirs of the testator reside in the county, the Court shall also direct citations to be issued and served upon them to appear and contest the probate of the will at the time appointed. **Citation to heirs.**

494. SEC. 14. If the will is presented by any other person than the one named as executor, or if it is presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county. **To persons named in will.**

495. SEC. 15. The Court shall also direct subpœnas to be issued to the subscribing witnesses to the will, if they reside in the county. **Subpœnas to subscribing witnesses.**

496. SEC. 16. At the time appointed, or at any time to which the hearing may be continued, upon proof being made, by affidavit or otherwise, to the satisfaction of the Court, that notice has been given, as required in the preceding sections, the Court shall proceed to hear the testimony in proof of the will. **Hearing of proof.**

497. SEC. 17. Any person interested may appear and contest the will. If it appears that there are minors or persons residing out of the county who are interested in the estate, the Court shall appoint some attorney to represent them. **Who may contest.**

498. SEC. 18. If no person shall appear to contest the probate of a will, the Court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed, in all particulars, as required by law, and that the testator was of sound mind at the time of its execution. **One witness sufficient, when.**

499. SEC. 19. If any person appears and contests a will, he shall file a statement in writing of the grounds of his opposition; when any issue or issues of fact shall be joined in the Probate Court, respecting the competency of the deceased to make a last will and testament, or respecting the execution by the deceased of such last will and testament, under restraint or undue influence, or fraudulent representations, or for any other cause affecting the validity of such will, the Court shall proceed to try and determine such issue or issues of fact, and shall be governed therein by the same rules as are provided by law for the trial of issues of fact in the District Courts of the Territory; *provided*, however, that no trial by jury of such issue or issues of fact shall be allowed in said Court. Issues of fact shall be deemed joined by the filing of the grounds of opposition with the Clerk of the Probate Court. **Contest, and proceedings on.**

500. SEC. 20. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity of any of them, shall be satisfactorily shown to the Court. **Subscribing witness to be examined.**

501. SEC. 21. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the Court may admit the testimony of other witnesses to prove the sanity of the testator, and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator, and of the subscribing witnesses, or any of them. **Other than subscribing witnesses sufficient, when.**

Testimony to be reduced to writing.

502. SEC. 22. The testimony of each witness shall be reduced to writing and signed by him, and shall be deemed good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from this Territory.

Certificate of proof.

503. SEC. 23. If the Court shall be satisfied upon the proof taken, and from the facts found by it, or by the jury, that the will was duly executed, and that the testator, at the time of the execution, was of sound and disposing mind, and not under restraint, undue influence, or fraudulent misrepresentations, a certificate of the proof and the facts found, signed by the Probate Judge, and attested by the Clerk, with the seal of the Court, shall be attached to the will.

Will and certificate to be filed.

504. SEC. 24. The will, and the certificate of proof thereof, together with the testimony which has been taken, shall be filed by the Clerk, and recorded by him in a book to be provided for the purpose.

Record, and exemplification of the Clerk, evidence.

505. SEC. 25. The record of the will, and the exemplification by the Clerk in whose custody it may be, shall be received in evidence, and be as effectual in all cases as the original would be if proved.

Wills proved in other States valid here, when.

506. SEC. 26. All wills which shall have been duly proved, and allowed in any other of the United States, or in any foreign country or State, may be allowed, and recorded in the Probate Court of any county in which the testator shall have left any estate; *provided*, it has been executed in conformity with the laws of this Territory.

Probate of copy.

507. SEC. 27. When a copy of the will, and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same shall be filed in Court, and the Court or Judge shall appoint a time of hearing, and notice shall be given in the same manner as in the case of an original will for probate.

Same.

508. SEC. 28. If, on hearing, it shall appear to the Court, that the instrument ought to be allowed, as the will of the deceased, the authenticated copy shall be admitted to probate, and recorded, the same as in case of other wills, and the will shall have the same force and effect as if it had been originally proved and allowed in the same Court.

Same.

509. SEC. 29. If, on hearing, it shall appear to the Court that the instrument ought to be allowed as the will of the deceased, a copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same Court.

Contesting will after probate.

510. SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same, or the validity of the will. For that purpose, he shall file in the Court before which the will was proved, a petition in writing, containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

Same, citation to issue.

511. SEC. 31. Upon the filing of the petition, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will

annexed, and to all the legatees named in the will, residing in the State, or to their guardians, if any of them are minors, or their personal representatives, if any of them are dead, requiring them to appear before the Court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

512. SEC. 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the Court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will shall be minors, and have no guardians, the Court shall appoint some attorney to represent them. **Hearing proof.**

513. SEC. 33. If, upon the hearing of the proofs of the parties, the Court shall decide that the will is, for any reason, invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked. **Revocation of probate.**

514. SEC. 34. Upon the revocation being made, the powers of the executor or administrator with the will annexed, shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation. **Effect of revocation.**

515. SEC. 35. The fees and expenses shall be paid by the party contesting the validity of the will, or the probate, if the will or probate be confirmed. If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and expenses of the proceedings, or the same shall be paid out of the property of the deceased, as the Court shall direct. **Fees and costs paid by contestants.**

516. SEC. 36. If no person shall, within one year after the probate, contest the same, or the validity of the will, the probate of the will shall be conclusive; saving, to infants, married women, and persons of unsound mind, a like period of one year after their respective disabilities are removed. **Probate, when conclusive.**

517. SEC. 37. Whenever any will shall be lost or destroyed, by accident or design, the Probate Court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to all persons interested having been first given, as prescribed in regard to proofs of wills in other cases. All the testimony given shall be reduced to writing, and signed by the witnesses. **Lost will,—how proven**

518. SEC. 38. No will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses. **Same.**

519. SEC. 39. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the Probate Judge, under his hand and the seal of his Court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary, or of administration, with **Certificate of proof.**

the will annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved.

Pending proof, administrators and executors may be restrained.

520. SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the Court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

III.—LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

Letters to be issued, when.

521. SEC. 41. When any will shall have been proved and allowed, the Probate Court shall issue letters thereon to the persons named in the will as executors, who are competent to discharge the trust, and who shall appear and qualify.

Executors, who competent.

522. SEC. 42. No person shall be deemed competent to serve as executor who, at the time the will is proved, shall be—First, under the age of majority; or, second, who shall have been convicted of an infamous crime; or, third, who, upon proof, shall be adjudged by the Court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding. If any such person be named as the sole executor in any will, or if all the persons named as executors are incompetent, or shall renounce, or fail for letters, or to appear and qualify, letters of administration with the will annexed, shall not be issued.

Objections to executors

523. SEC. 43. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objections shall be heard and determined by the Court; a petition may also be filed for the issuance of letters of administration with the will annexed.

Marriage revokes authority of executrix.

524. SEC. 44. When an unmarried woman, who shall have been appointed executrix, shall marry, her marriage shall extinguish her authority. When a married woman is nominated as executrix, she may be appointed and serve, in every respect, as if she were a *feme sole.*

Executor of executor.

525. SEC. 45. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator, left unadministered, shall be issued.

Letters to minors.

526. SEC. 46. When a person under the age of twenty-one years shall be named executor, letters of administration with the will annexed, shall be granted during the minority of the executor, unless there is another executor who shall accept the trust and qualify, in which case, the executor who shall accept the trust and qualify, shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor.

527. SEC. 47. When all the executors named shall not be appointed by the Court, such as are appointed shall have the

same authority to perform every act and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together. When there are two executors or administrators, the acts of one alone shall be effectual, if the other is absent from the Territory, or for any cause is laboring under any legal disability from serving, as if he should have given his co-executor, or co-administrator, authority, under seal, to act alone or for both; and when there are more than two executors, the act of a majority shall be sufficient. **Power of one or more of several executors.**

528. SEC. 48. Administrators with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose. **Power of administrator with will annexed.**

529. SEC. 49. Letters testamentary and of administration with the will annexed, shall be signed by the Clerk and be under the seal of the Court. **Letters signed; seal.**

530. SEC. 50. Letters testamentary may be in substantially the following form: "The Territory of Nevada, County of ——. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the County of ——, C. D., who is named therein, is hereby appointed executor. Witness, G. H., Clerk of the Probate Court of the County of ——, with the seal of the Court affixed, the —— day of ——, A. D. 18—. (Seal). By order of the Court, G. H., Clerk." **Form of letters testamentary.**

531. SEC. 51. Letters of administration with the will annexed, may be substantially in the following form: "The Territory of Nevada, County of ——. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the County of ——, and there being no executor named in the will (or, as the case may be), C. D. is hereby appointed as administrator with the will annexed. Witness, G. H., Clerk of the Probate Court of the County of ——, with the seal of the Court affixed, the —— day of ——, A. D. 18—. (Seal). By order of the Court, G. H., Clerk." **Of administration with will annexed.**

532. SEC. 52. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order: **Who entitled to letters.**

First—The surviving husband or wife, or some person as he or she may request to have appointed.

Second—The children.

Third—The father or mother.

Fourth—The brothers.

Fifth—The sisters.

Sixth—The grandchildren.

Seventh—Any other of the kindred entitled to share in the distribution of the estate.

Eighth—The Public Administrator.

Ninth—The creditors.

Tenth—Any of the kindred, not above enumerated, within the fourth degree of consanguinity.

Eleventh—Any person or persons legally competent.

Proviso.

Provided, That when there was any partnership existing between the intestate, at the time of his or her death, and any other person, the surviving partner shall in no case be appointed administrator of the estate of such intestate. (As amended March 11, Stats. 1867, p. 99.)

Who to have preference.

533. SEC. 53. When there shall be several persons claiming and equally entitled to the administration, males shall be preferred to females, and relatives of the whole blood to those of the half blood.

Equally entitled to, discretion in Court.

534. SEC. 54. When there are several persons equally entitled to the administration, the Court may, in its discretion, grant letters to one or more of them.

Who not entitled to letters.

535. SEC. 55. No person shall be entitled to letters of administration who shall be: First, under the age of majority; or, second, who shall have been convicted of an infamous crime; or, third, who, upon proof, shall be adjudged by the Court incompetent to execute the duties of trust, by reason of drunkenness, improvidence, or want of integrity or understanding.

Marriage revokes authority of administratrix.

536. SEC. 56. When any unmarried woman, who shall have been appointed administratrix, shall marry, her marriage shall extinguish her authority.

Minors entitled, letters to guardians.

537. SEC. 57. If any person entitled to administration shall be a minor, administration shall be granted to his or her guardian.

Application for, by petition.

538. SEC. 58. Application for letters of administration shall be made by petition, in writing, signed by the applicant or his counsel, and filed by the Clerk of the Court. The petition must state the facts essential to give the Court jurisdiction of the case, and when the name is known to the administrator, he shall state the names, ages, and residence of the heirs of the deceased, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterwards proved in the course of the administration, the decree of administration and the subsequent proceedings shall not on account of such want of jurisdictional averments, be held void.

When and where granted.

539. SEC. 59. Letters of administration shall be granted at a regular term of the Court, or at chambers, at a special term appointed by the Judge for the hearing of the application.

Notice of application

540. SEC. 60. When any petition, praying for letters of administration, has been filed, the Clerk shall give notice thereof, by causing notices to be posted up in at least three public places in the county, one of which shall be at the place where the Court is held. The notice shall state the name of the deceased, the name of the applicant, and the term of the Court at which the application will be heard. Such notice shall be given at least ten days before the hearing.

Who may contest.

541. SEC. 61. Any person interested may contest the application, by filing a written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own rights to the administration, and pray that letters be issued to himself, after proper petition filed and due notice given.

Hearing application

542. SEC. 62. On the hearing, it being first proved that notice has been given according to law, the Court shall proceed

to hear the allegations and proof of the parties, and to order the issuance of letters of administration, as the case may require.

543. SEC. 63. An entry in the minutes of the Court that proof was made that notice had been given according to law, shall be conclusive evidence of the fact of such notice. Evidence of notice given.

544. SEC. 64. Letters of administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves. Letters may be granted to those not entitled first.

545. SEC. 65. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his having died intestate shall be proved by the testimony of the applicant, and the Court may also examine any other person concerning the time, place, and manner of the death, the place of his residence at the time of his death, the value and character of his property, and whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose. Proof of death of intestate.

546. SEC. 66. Administration may be granted to one or more competent persons, although not entitled to the same, at the request of the person entitled to be joined with such person. The request shall be in writing, and shall be filed in the Court. When the person entitled is a non-resident of the Territory, affidavits, or depositions, taken ex parte before any officer authorized by the laws of the Territory or State where the same are taken, to take acknowledgments and administer oaths, may be received as prima facie evidence of the identity of the party, if free from reasonable suspicion, and the fact be established to the satisfaction of the Court. Letters may be granted to persons at request of others.

547. SEC. 67. When letters of administration have been granted to any other person than the surviving husband or wife, the child, the father, mother, or the brother of the intestate, any one of them may obtain the revocation of the letters by presenting to the Probate Court a petition praying the revocation, and that letters of administration be issued to him or her. Revocation

548. SEC. 68. When any such petition is filed, the Clerk shall issue a citation to the administrator to appear and answer the petition at the next regular term of the Court, or at any special term that may be appointed by the Judge. Citation to answer.

549. SEC. 69. At the time appointed, the citation having been duly served and returned, the Court shall proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked. Hearing.

550. SEC. 70. The surviving husband or wife, when letters of administration have been granted to a child, to the father, or to a brother of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his or her prior right, and obtain letters of administration, and have the letters before granted revoked, in the manner prescribed in the three preceding sections. Surviving husband or wife may have letters revoked, when.

Form of letters.

551. SEC. 71. Letters of administration shall be signed by the Clerk, and be under the seal of the Court, and may be in substantially the following form:

"Territory of Nevada, County of ——. C. D. is hereby appointed administrator of the estate of A. B., deceased. (Seal.) Witness, G. H., Clerk of the Probate Court of the County of ——, with the seal of the Court affixed, the —— day of ——, A. D. 18—. By order of the Court. G. H., Clerk.

Oath of executor and administrator, to be recorded with letters

552. SEC. 72. Before letters testamentary or of administration shall be issued to the executor or administrator, he shall take and subscribe an oath or affirmation, before the Probate Judge, or Clerk, that he will perform, according to law, the duties of executor or administrator; said oath shall be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by, executors, or administrators, with the affidavits and certificates thereon, as provided for in this Act, shall be forthwith recorded by the Clerk of the Court having jurisdiction of the estates respectively, in a book to be kept by him in his office for that purpose, and the said records, and duly certified copies taken therefrom, shall have the same force and effect in all cases whatsoever as the original papers would have.

Bond of.

553. SEC. 73. Every person to whom letters testamentary or of administration, shall have been directed to issue, shall, before receiving the letters, execute a bond to the people of the Territory of Nevada, with two or more sufficient sureties, to be approved by the Probate Judge. In form, the bond shall be joint and several, and the penalty shall not be less than twice the value of the personal property belonging to the estate, which value shall be ascertained by the Probate Judge, by the examination on oath of the party applying, and of any other persons he may think proper to examine. The Probate Judge shall require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him. The bond shall be conditioned that the executor or administrator shall fathfully execute the duties of the trust according to law. He shall also require bond and sufficient surety for the annual rents, issues, and profits of all real estate in his charge, as such executor or administrator, to be approved by the Probate Judge.

Additional bond.

Bond, separate.

554. SEC. 74. When two or more persons shall be appointed executors or administrators, the Probate Judge shall take a separate bond from each of them.

Bond may be sued on from time to time.

555. SEC. 75. The bond shall not be void upon the first recovery, but may be sued upon from time to time by any person aggrieved, in his own name, until the whole penalty is exhausted.

Sureties to justify.

556. SEC. 76 In all cases where bonds are required by this Act, the sureties must justify on oath, before the Judge or Clerk of some Court having a seal, to the effect that they are householders, or freeholders, resident within this Territory, and worth the amount justified to, over and above their debts and liabilities, exclusive of property exempt from execution; such justification shall be in writing, signed by the person justifying, and certified to by the Judge or Clerk who takes the same, and attached to and filed with the bond. Whenever the penal sum

of the bond amounts to more than two thousand dollars, the sureties may be allowed to become liable for portions of said penal sum, making in the aggregate the whole penal sum of such bond.

557. SEC. 77. Before the Probate Judge approves any bond required by said Act, he may, of his own motion, or at any time after the approval of such bond, upon the motion of any person interested in said estate, supported by affidavit, that any one or all of such securities are not worth as much as they have justified to, order a citation to issue, requiring such security or securities to appear before him, at a particular time and place, to testify touching his or their property, and its value; and the Judge shall, at the time such citation is issued, cause a notice to be issued to the executor or administrator, and requiring his appearance at the return of the citation. Upon the return of the citation, the Judge may swear the securities and such witnesses as may be produced touching the property of such securities and its value; and if, upon such investigation, the Judge is satisfied that the bond is insufficient, he may require sufficient additional security within such time as may be reasonable, not less than five days. Doubtful sureties, additional may be required.

558. SEC. 78. If sufficient security is not given within the time fixed by the Judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, shall be appointed to the administration. Failure to give, power to cease.

559. SEC. 79. When it is expressly provided, in the will of a testator, that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor, to whom letters have been issued without bond, may, at any time afterwards, whenever it may be shown from any cause to be necessary or proper, be required to appear and file a bond, as in other cases. Letters without bond, when

560. SEC 80. Whenever any person interested in any estate, shall discover that the sureties of any executor or administrator have become, or are becoming insolvent, that they have removed, or are about to remove, from the Territory, or that, from any other cause, the bond is insufficient, he may apply, by petition, to the Probate Judge, and require that further security be given. Application for further surety.

561. SEC. 81. If the Probate Judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator, at least five days before the return day. If he shall have absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence. Citation to issue.

562. SEC. 82. On the return of the citation, or at such other time as the Judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily appear, that the security is, from any cause, insufficient, he may make an order requiring the executor or administrator to give Hearing of application

further security, or to file a new bond in the usual form, within a reasonable time, not exceeding five days.

Failure to give further security, powers cease.

563. SEC. 83. If the executor or administrator neglect to comply with the order, within the time prescribed, the Judge shall, by order, revoke his letters, and his authority shall thereupon cease.

Pending application powers may be suspended.

564. SEC. 84. When a petition is presented, praying that an executor or administrator be required to give further security, and when it shall also be alleged, on oath or affirmation, that the executor or administrator is wasting the property of the estate, the Judge may, by order, suspend his powers until the matter can be heard and determined.

Judge may require further security.

565. SEC. 85. When it shall come to his knowledge that the bond of any executor or administrator is, from any cause, insufficient, it shall be the duty of the Probate Judge, without any application, to cause him to be cited to appear and show cause why he should not give further security, and to proceed thereon, as upon the application of any person interested.

Sureties may be released, how.

566. SEC. 86. When either or all of the sureties of any executor, or administrator, shall desire to be released from responsibility, on account of his future acts, they may make application to the Probate Court or Judge for relief, and the Judge or Court shall cause a citation to the executor or administrator to be issued and served, requiring him to appear, at a time and place to be therein specified, and to give other security, which citation shall be served personally.

Sureties released not liable for subsequent acts.

567. SEC. 87. If new sureties be given to the satisfaction of the Judge, he may, thereupon, make an order, that the surety or sureties who applied for relief, shall not be liable, on their bond, for any subsequent act, default, or misconduct of the executor or administrator.

On release, failure to give others, powers suspended.

568. SEC. 88. If the executor or administrator neglect or refuse to give new sureties, to the satisfaction of the Judge, on the return of the citation, or within such reasonable time as the Judge shall allow, not exceeding five days, unless the surety or sureties making the application shall consent to a longer extension of time, the Court or Judge shall, by order, revoke the letters granted.

Applications, etc.

569. SEC. 89. The applications, authorized by the nine preceding sections of this chapter, may be heard and determined out of term time. All orders made therein shall be entered upon the minutes of the Court.

Special, may be appointed.

570. SEC. 90. When there shall be a delay in granting letters testamentary, or of administration, from any cause, or when such letters shall have been granted irregularly, or no sufficient bond shall have been filed, as required by law, or when no application shall have been made for such letters, the Probate Judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate; or, he may direct the Public Administrator of his county to take charge of the estate.

571. SEC. 91. The appointment may be made out of term time, and without notice, and shall be made, by entry, upon the

minutes of the Court, which shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the Clerk shall issue letters of administration to such person, in conformity with the order. Who may be appointed.

572. SEC. 92. In making the appointment of a special administrator, the Probate Judge shall give preference to the person or persons entitled to letters testamentary, or of administration, but no appeal shall be allowed from the appointment. Who to have preference.

573. SEC. 93. Before any letters shall issue to any special administrator, he shall give bond in such sum as the Probate Judge may direct, with sureties, to the satisfaction of said Judge, conditioned for the faithful performance of his duties. Bond of.

574. SEC. 94. The special administrator shall collect and preserve, for the executor or administrator, all the goods, chattels, and debts of the deceased, all incomes, rents, issues, and profits, claims and demands of the estate, shall take charge and management of, enter upon, and preserve from damage, waste, and injury, the real estate; and for any such, and all necessary purposes, may commence and maintain or defend suits and other legal proceedings as an administrator. He may sell such perishable estate as the Probate Court may order to be sold, and may exercise such other powers as may have been conferred upon him by his appointment; but, in no case shall he be liable to an action by any creditor, on any claim against the estate, nor pay any claim against the deceased. Powers and duties.

575. SEC. 95. When letters testamentary, or of administration, on the estate of the deceased, have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the property and effects of the deceased in his hands; and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator. Powers cease, when

576. SEC. 96. The special administrator shall also render an account on oath, of his proceedings, in like manner as other administrators are required to do. To render account on oath.

577. SEC. 97. Whenever an executor or administrator shall die, or his letters be revoked, and the circumstances of the estate require the immediate appointment of an administrator, the Probate Judge may appoint a special administrator, as provided in the preceding sections. When administrator dies, etc., special may be appointed.

578. SEC. 98. In case any one of several executors or administrators, to whom letters shall have been granted, shall die, become lunatic, be convicted of an infamous crime, or otherwise become incapable of executing the trust; or in case the letters testamentary, or of administration, shall be revoked or annulled, according to law, with respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration. In case of incompetency of one or more of several executors or administrators, others may act.

579. SEC. 99. If all such executors or administrators shall die, or become incapable, or the power and authority of all of them shall be revoked according to law, the Probate Court Incompetency of all, others to be appointed.

shall issue letters of administration, with the will annexed or otherwise, to the widow or next of kin, or others, in the same manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions as hereinbefore required of administrators, and shall have the like power and authority.

Letters revoked on proof of will.

580. SEC. 100. If, after granting letters of administration on the ground of intestacy, a will of the deceased shall be duly proved and allowed by the Court, the letters of administration shall be revoked, and the power of the administrator shall cease, and he shall render an account of his administration within such time as the Court shall direct.

Powers of new administration.

581. SEC. 101. In such case, the executor of the will, or the administrator, with the will annexed, shall be entitled to demand, sue for, and collect all the rights, goods, chattels, and effects of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Resignations.

582. SEC. 102. Any executor or administrator may, at any time, by writing filed in the Probate Court, resign his appointment; *provided*, he shall first settle his accounts and deliver up all the estate to such person as may be appointed by the Court.

Acts valid before revocation.

583. SEC. 103. All acts of an executor or administrator, as such, before the revocation of his letters testamentary, or of administration, shall be as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Transcript of record, evidence.

584. SEC. 104. A transcript from the minutes of the Court, showing the appointment of any person as executor or administrator, together with the certificate of the Clerk, under his hand and the seal of his Court, that such person has given bond and been qualified, and that letters testamentary, or of administration, have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

When Judge not competent to act.

585. SEC. 105. No Probate Judge shall admit to probate any will, or grant letters testamentary, or of administration, in any case where he shall be interested as next of kin to the deceased, or as a legatee or devisee under the will, or where he shall be named as executor or trustee in the will, or shall be a witness thereto.

Judge of adjoining county to act.

586. SEC. 106. When any Probate Judge, who would otherwise be authorized to act, shall be precluded from acting from the causes mentioned in the preceding section, or when he shall be in any manner interested upon a representation, and due proof thereof, to the Probate Judge of an adjoining county, such Judge shall be vested with all the powers and authority of the proper Probate Judge, in relation to the proof of any will, and the granting of letters testamentary or of administration thereon, and the granting of letters of administration in cases of intestacy, and shall retain jurisdiction as to all subsequent proceedings in regard to the estate.

IV.—THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

587. SEC. 107. Every executor or administrator shall make and return to the Court, at its first term after his appointment, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

Inventory, return of.

588. SEC. 108. For the purpose of making the appraisement, the Court or Judge shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the Court; their compensation, as allowed, shall be in the form of a bill of items for their services, including all necessary disbursements, which shall be sworn to by them and filed with the inventory, and which shall not exceed five dollars per day. If only one day's services are charged, the bill need not be sworn to. If any part of the estate shall be in any other county than that in which letters issued, appraisers thereof may be appointed, either by the Probate Judge having jurisdiction of the case, or by the Probate Judge of such county.

Appraisement, how made.

589. SEC. 109. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability. They shall then proceed to estimate and appraise the property; each article shall be set down separately, with the value thereof in dollars and cents, in figures opposite to the articles respectively. The inventory shall contain all the estate of the deceased, real and personal; a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraiser, may be collectable on each debt, interest, or security. The inventory shall show, so far as the same can be ascertained by the executor, or the administrator, what portion of the property is community property, and what portion is the separate property of the deceased.

Appraisers to take oath.

590. SEC. 110. The inventory shall also contain an account of all moneys belonging to the deceased which shall have come to the hands of the executor or administrator, and if more shall have come to his hands, the fact shall be so stated in the inventory.

Account of money received.

591. SEC. 111. The naming any person executor in a will shall not operate as a discharge of any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands at the time the debt or demand becomes due.

Naming executor does not discharge debt.

592. SEC. 112. The discharge or bequest in a will of any debt or demand of the testator against any executor named in

Discharge of debt by will not valid as against creditors. his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Oath of appraisers. 593. SEC. 113. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath before the Probate Judge, or the Clerk of the Court, or any officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the deceased which has come to his knowledge and possession, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be indorsed upon or annexed to the inventory.

Non-return of inventory. 594. SEC. 114. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding two months, as the Court or Judge shall for reasonable cause allow, the Court may, with or without further notice, revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate by his neglect. Penalty.

Supplemental inventory. 595. SEC. 115. Whenever property not mentioned in any inventory that shall have been made shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned within two months after the discovery thereof; and the making of such inventory may be enforced after notice by attachment or removal from office.

Right of possession of all property. 596. SEC. 116. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled, or until delivered over by order of the Probate Court to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings, and fences thereon which are under his control.

Personal estate first chargeable with debts. 597. SEC. 117. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits, in the hands of the executor or administrator, shall not be sufficient to pay the debts of deceased and the expenses of administration, and the allowances to the family of the deceased, the whole of the real estate may be sold, for that purpose, by the executor or administrator, in the manner prescribed by this Act.

Embezzlement of effects. 598. SEC. 118. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable and be liable to the action of the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

599. SEC. 119. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the Probate Judge, on oath, that any person is suspected to have concealed, embezzled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased; or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose, the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any last will of the deceased, the said Judge may cite such person to appear before the Probate Court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined either before the Probate Court of the county where he may be found, or before the Court issuing the order or citation. But if, in the latter case, he appear and be found innocent, his necessary expenses shall be allowed him out of the estate. Proceedings for.

600. SEC. 120. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him or her, touching the matter of such complaint, the Court may, by warrant for that purpose, commit him or her to the County Jail, there to remain in close custody until he or she shall submit to the order of the Court, or be discharged according to law; and if, upon such examination, it shall appear that such person has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose, the right, title, interest, or claim of the deceased to any real or personal estate, claim or demand, or any last will of the deceased, the Probate Court may take an order requiring such person to disclose his knowledge thereof to said administrator, and may commit said person to the County Jail, there to remain until such order be complied with, or be discharged according to law; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the Probate Court. The order for such disclosure, made upon such examination, shall be prima facie evidence of the right of such administrator to such property, in any action that may be brought for the recovery thereof; and any judgment recovered therein shall be for the double value of the property, and damages in addition thereto equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side. Penalty for refusing to answer, etc.

601. SEC. 121. The Probate Judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such Court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the per- Persons in charge of effects cited to appear.

son so cited shall refuse to appear and render such account, the Court may proceed against him as provided in the preceding section.

V.—PROVISION FOR THE SUPPORT OF THE FAMILY.

May retain homestead.

602. SEC. 122. When a person shall die, leaving a widow or a minor child or children, the widow, child, or children shall, until letters have been granted, and the inventory has been returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the Probate Judge.

Property may be set apart.

603. SEC. 123. Upon the return of the inventory, or at any subsequent time during the administration, the Court, or Probate Judge may, of his own motion, or on application, set apart for the use of the family of the deceased, all personal property which is by law exempt from execution, and the homestead, as designated by the general homestead law, or by section one hundred and twenty-six (126) of this Act.

Allowance for family.

604. SEC. 124. If the whole property exempt by law be not included in the inventory, and if the amount set apart be insufficient for the support of the widow and child, or children, the Probate Court shall make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

Allowance, priority of.

605. SEC. 125. Any allowance made by the Court, in accordance with the provisions of this chapter, shall be paid by the administrator in preference to all other charges, except funeral charges and expenses of administration.

What may be set apart.

606. SEC. 126. If there is no law in force exempting property from execution, the following shall be set apart for the use of the widow or minor child or children, and shall not be subject to administration: First—All spinning wheels, weaving looms, and stoves put up or kept for use. Second—The family Bible, family pictures, and school books and library, not exceeding in value two hundred dollars. Third—All sheep, to the number of twenty, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, with the necessary food for them for six months. Fourth—All wearing apparel of the widow and children, and all household goods, furniture, and utensils, not exceeding in value seven hundred and fifty dollars. Fifth—The homestead, consisting of any quantity of land, not exceeding twenty acres, and the dwelling house thereon, with its appurtenances, not being included in any incorporated town or city; or instead thereof, a quantity of land, not exceeding one lot, in any incorporated town or city, and the dwelling house thereon and its appurtenances, to be selected by the widow, or, if there be no widow, to be designated by the Probate Judge, and not to exceed in any case more than five thousand dollars in value.

How apportioned.

607. SEC. 127. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow. If he shall have left, also, a minor child or children, the one half of such property shall belong to the widow, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow, the whole shall belong to the minor child or children.

Entire estate may be set apart

608. SEC. 128. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of five hundred dollars, the Probate Court shall, by a decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole of the estate, after the payment of the funeral charges and expenses of the administration, and there shall be no further proceedings in the administration unless further estate be discovered; and, when it shall appear that the value of the whole estate does not exceed the sum of one thousand dollars, it shall be in the discretion of the Probate Court to dispense with the regular proceedings, or any part thereof, prescribed in this Act, for the purpose of a summary administration of the estate, and to order distribution of the estate at the end of six months after the issuance of letters; *provided*, that notice to creditors shall have been given to present their claims within four months after the first publication of such notice.

Property to go to children, when.

609. SEC. 129. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the one hundred and twenty-fifth and one hundred and twenty-sixth sections of this Act, the whole property so set apart shall go to the minor children.

VI.—OF CLAIMS AGAINST THE ESTATE.

Publication of notice, filing of.

610. SEC. 130. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one, if not, then in such newspaper as may be designated by the Court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them, with the necessary vouchers, within ten months after the first publication of the notice to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the Judge or Court shall direct, but not less than once a week for four weeks. The Court or Judge may also direct additional notice by publication or posting. In case such executor or administrator resign, or be removed, before the expiration of ten months after the first publication of such notice, his successor shall give such notice only for the unexpired portion of the ten months. After the notice shall have been given, as required by the preceding section, a copy thereof, with the affidavit, or affidavits, of due application, or of publication and posting,

may be filed; and upon such affidavit, or affidavits, or upon other testimony, to the satisfaction of the Court, a decree shall be made showing that due and legal notice to the creditors has been given, and directing that such decree be entered in the minutes of the Court.

Claims, when barred.

611. SEC. 131. If a claim be not presented within ten months after the first publication of the notice, it shall be barred forever; *provided*, if it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute; *and provided, further*, that when it shall be made to appear, by the affidavit of the claimant, to the satisfaction of the executor or administrator, and the Probate Judge, that the claimant had no notice as provided in this Act, by reason of absence from this Territory, it may be presented at any time before a decree of distribution is entered.

Sworn to, interest on.

612. SEC. 132. Every claim presented to the administrator, shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant or other affiant; *provided*, that when the affidavit is made by any other person than the claimant, he shall set forth in the affidavit the reasons it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. The amount of interest shall be computed and included in the statement of the claim, and the rate of interest determined; *provided*, that no claim which shall have been due and payable thirty days prior to the death of the deceased, shall bear greater interest than ten per cent per annum, from and after the time of issuing letters.

Claim of Probate Judge.

613. SEC. 133. Any Probate Judge may present a claim against the estate of any deceased person for allowance, to the executor or administrator of such estate; and if the executor or administrator allows such claim, he shall, in writing, designate some Probate Judge of an adjoining county; and the Probate Judge so designated by the executor or administrator shall, upon the presentation of such claim to him, have the same power to allow or to reject it as he would have if the will had been proved or administration granted in his own county; and the Probate Judge presenting such claim shall, in case of its rejection by the executor or administrator, or by such Probate Judge as shall have acted upon it, have the same right to sue in a proper Court for its recovery as other persons have when their claims against an estate are rejected.

Claims, indorsement of.

614. SEC. 134 When a claim, accompanied by the affidavit required in the preceding sections, has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow this claim, it shall be presented to the Probate Judge for his approval, who shall, in the same manner, indorse upon it his allowance or rejection. If the executor or administrator, or Judge, refuse or neglect to indorse such allowance or rejection for ten days after the claim shall have been presented to him, such refusal or neglect may be deemed equivalent to a rejection;

Rejection of, what considered.

and if a presentation be made by a Notary, the certificate of such Notary, under seal, shall be prima facie evidence of such presentment and rejection, and if made by any person other than the claimant, or Notary, the affidavit of such person to the fact shall be prima facie evidence of such presentment and rejection. If the claim be presented to the executor or administrator, before the expiration of the time limited for the presentation of claims, the same may be held valid, though acted upon by the executor or administrator, and by the Judge after the expiration of such time.

Claims allowed, to be filed.

615. SEC. 135. Every claim which has been allowed by the executor or administrator, and approved by the Probate Judge, shall, within thirty days thereafter, be filed in the Probate Court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note, or other instrument, the original instrument shall be presented, and the allowance and approval, or rejection, shall be indorsed thereon, or be attached thereto. If the claim, or any part thereof, be secured by a mortgage, or other lien, such mortgage or evidence of lien shall be attached to the claim and filed therewith, unless the same be recorded in the office of the Recorder of the county in which the land lies, in which case it shall be sufficient to describe the mortgage or lien, and refer to the date, volume, and page of its record. And in all cases, it shall be permitted to the claimant to withdraw his claim from file on leaving a certified copy, with a receipt indorsed thereon by himself or his agent. A brief description of every claim filed shall be entered by the Clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and the date of approval; *provided*, if such original instrument be lost or destroyed, then, in lieu thereof, the claimant shall be required to file his affidavit, particularly describing such instrument, and stating the loss or destruction thereof, upon which affidavit the indorsement hereinafter mentioned shall be made.

Claims rejected, suit on.

616. SEC. 136. When a claim is rejected, either by the executor or administrator, or the Probate Judge, the holder shall bring suit in the proper Court against the executor or administrator, within three months after the date of its rejection if it be then due, or within three months after it becomes due, otherwise the claim shall be forever barred.

Claims barred by Statute of Limitation.

617. SEC. 137. No claim shall be allowed by the executor or administrator, or by the Probate Judge, which is barred by the Statute of Limitations.

Claims must be presented before suit.

618. SEC. 138. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

Limitation of action.

619. SEC. 139. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Same, when pending before death.

620. SEC. 140. If an action be pending against the testator or intestate, at the time of his death, the plaintiff shall in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases, and no recovery shall be had in the action unless proof be made of the presentments.

Allowance in part.

621. SEC. 141. Whenever any claim shall be presented to any executor or administrator, or to the Probate Judge, and he shall be willing to allow the same in part, he shall state in his indorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action which he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed. (1)

(1) Our statute in regard to probate matters does not prohibit bringing suit on an allowed claim, but simply denies the plaintiff costs if he recovers no more than the administrator was willing to allow.—Corbett v. Rice, 2 Nev., p. 330.

When others than the defendant are necessary parties to a foreclosure suit, the proceeding cannot be in the Probate Court, but must be in equity.—Id.

When only the mortgagee and the representative of the deceased mortgagor are necessary parties, the Probate Court and equity Courts have concurrent jurisdiction.—Id.

In those cases where a Probate Court has jurisdiction and can administer full relief, it is in the discretion of a Court of equity to assume jurisdiction or turn the parties over to the Probate Court. And if a Court of equity proceeds with the foreclosure, it has the right either to allow or refuse costs to the mortgagee.—Id.

Per dissenting opinion of LEWIS, C. J.:

An action of foreclosure cannot be maintained against the estate of a deceased mortgagor after the note and mortgage have been allowed by the administrator as a valid claim against the estate, and before the final settlement, where there are no parties affected except the claimant and the administrator.—Id.

When the complaint shows the fact that the claim has been allowed, it is demurrable precisely the same as if it alleged a former suit and judgment upon the same claim, because the allowance of the demand gives it all the effect of a judgment against the estate.—Id.

The word "claim," in the Probate Act of this State, includes secured as well as unsecured claims.—Id.

The only distinction which the law seems to make between secured and unsecured debts is, that the former shall have the proceeds of the security applied in its payment, if the security is sold.—Id.

Effect of judgment.

622. SEC. 142. The effect of any judgment rendered against any executor or administrator upon any claim for money against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the Probate Judge, and the judgment shall be, that the executor or administrator pay, in due

course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the Probate Court. No execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

Judgment recovered before death.

623. SEC. 143. When any judgment has been rendered against the testator or intestate in his life, no execution shall issue thereon after his death; but a certified copy of such judgment shall be presented to the executor or administrator, and be allowed and filed, or rejected, as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration; *provided*, however, that if the execution shall have been actually levied upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands. The executor or administrator may, however, require the affidavit of the claimant, or other satisfactory proof that the judgment, or any portion thereof, is justly due and unsatisfied.

Claims may be referred.

624. SEC. 144. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the Probate Judge. Upon filing the agreement and approval of the Probate Judge, in the office of the Clerk of the District Court for the county in which the letters testamentary or of administration were granted, the Clerk shall, either in vacation or in term, enter a minute of the order, referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had in the Probate Court, and the report of the referee, if confirmed, shall establish or reject the claim the same as if it had been allowed or rejected by the executor or administrator, and the Probate Judge.

Proceedings on reference.

625. SEC. 145. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the Court in which his appointment shall have been entered. The same proceedings shall be had in all respects. The referee shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The Court may set aside the referee, or appoint another in his place, or may set aside or confirm the report, and adjudge costs as in actions against executors and administrators, and the judgment of the Court thereon shall be valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Administrator liable for costs.

626. SEC. 146. When a judgment has been recovered with costs against any executor or administrator, the executor or administrator shall be individually liable for the costs, but they shall be allowed him in his administration accounts, unless it shall appear that the suit or proceeding, in which the costs were taxed, shall have been prosecuted or resisted without just cause.

Claim of administrator to be presented to Judge for allowance.

627. SEC. 147. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenti-

cated by affidavits, shall be presented for allowance or rejection to the Probate Judge, and its allowance by the Judge shall be sufficient evidence of its correctness.

Notice to creditors, failure to give.

628. SEC. 148. If any executor or administrator shall neglect for two months after his appointment to give notice to creditors, as prescribed by this chapter, it shall be the duty of the Court to revoke his letters.

Statement of claims presented.

629. SEC. 149. At the same term at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate, which shall have been presented to him, when required by the Court, and from term to term thereafter shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Order for, otherwise not valid

630. SEC. 150. No sale of any property of an estate of a deceased person shall be valid unless made under an order of the Probate Court, except as otherwise provided in this Act or other Acts.

Application for order.

631. SEC. 151. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections, which shall be heard and determined.

Sale of perishable property.

632. SEC. 152. At any time after receiving letters, the executor or administrator, or special administrator, may apply to the Court or Judge for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased. If there be a delay in obtaining such order, such property may be sold without an order of sale; *provided*, that the executor or administrator, or special administrator, shall be held responsible for such property, unless, after making a sworn return, and on a proper showing, the Court shall approve such sale. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, the executor or administrator may also apply for an order to sell so much of the personal property as shall be necessary. Upon filing his petition, notice of at least five days shall be given of the hearing of the application, either by posting notices or by advertising. He may make a similar application, either in vacation or term, from time to time, as long as any personal property remains in his hands, and a sale thereof is necessary; and if he deem it for the best interest of the estate, he may, at any time after the filing of the inventory, make an application in like manner, and after giving like notice, for an order to sell the whole of the personal property belonging to the estate.

Of personal

Notice, etc.

Personal, must be sold first.

633. SEC. 153. If it appears that a sale is necessary, or for the best interest of the estate, the Court or Judge shall order it to be made. In making such sales, the Court or Judge shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially bequeathed, to be first sold. Articles so bequeathed shall not

be sold until the residue of the personal estate has been applied to the payment of the debts.

634. SEC. 154. The sale of personal property shall be made at public auction, and after public notice given for at least ten days, unless for good reason shown, the Court or Probate Judge shall order a private sale, or a shorter notice. Public sales of such property shall be made at the Court House door, at the residence of the deceased, or at some other public place to be mentioned in the notice; and no sale shall be made of any property which is not present at the time of selling. **Sale, how made.**

635. SEC. 155. The notice shall be given by notices posted in three public places in the county, or by publication in a newspaper, if the Judge shall so order, in which shall be specified the time and place of the sale. **Notice of, how given.**

636. SEC. 156. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, the debts that may be outstanding against the deceased, and the debts, expenses, and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon order of the Probate Court. **Real estate may be sold, when.**

637. SEC. 157. To obtain such order, he shall present a petition to the Probate Court, or to the Judge at chambers, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of, the debts outstanding against the deceased, as far as the same can be ascertained or estimated, the amount due upon the family allowance, or that will be due after the same shall have been in force for one year, the debts, expenses, and charges of the administration already accrued, and an estimate of what will or may accrue during the administration, a description of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the intestate estate has acquired any interest, and the condition and value of the respective portions and lots, and whether the same be community or separate property, the names and ages of the devisees, if any, and of the heirs of the deceased; which petition shall be verified by the oath of the party presenting the same. If the inventory and appraisement on file contain a full description of the personal estate of the deceased, and of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the estate had acquired any interest, such inventory, by a proper reference, may be made a part of the petition for a description of the personal estate, or real estate, or both; and if the same be full as to all property, except property subsequently discovered, or profits subsequently received, such reference may be had to the inventory, and the additional property may be set forth in the petition. If all the matters above enumerated cannot be ascertained, the same shall be so stated in the petition. **Application for order.**

638. SEC. 158. If it shall appear to the Court or Judge, by such petition, that it is necessary to sell the whole or some portion of the real estate for the purposes mentioned in section one hundred and fifty-six of this Act, or any or either of them, such petition shall be filed, and an order shall thereupon be made, directing all persons interested in the estate to appear **Order to show cause.**

before the Court at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased as shall be necessary.

How to be served.

639. SEC. 159. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least five days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the Court or Judge shall order; *provided*, however, if all persons interested in the estate shall signify, in writing, their assent to such sale, the notice may be dispensed with.

Hearing of application

640. SEC. 160. The Probate Court, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon satisfactory proof of the due service or publication of a copy of the order, by affidavit, or otherwise, or upon filing the consent in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and, if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

Attorney may be appointed for minors and absent heirs.

641. SEC. 161. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, a copy of the order shall be served upon the guardian, at least ten days before the actual hearing. If they have no guardian, the Court or Judge shall, at the time of filing the petition, or before proceeding to act upon the petition, appoint some disinterested person their attorney, for the sole purpose of appearing for them, and taking care of their interest in the proceedings. The Court may also, upon the hearing, if it be deemed necessary, appoint such attorney for the heirs or devisees, if they are unrepresented, whether minors, or otherwise, and may likewise appoint an attorney for the creditors, if they are unrepresented. If such guardian of the minors, or such attorney for minors, or others, appear on the hearing, such appearance shall be evidence of service of notice upon such guardian or attorney.

Witnesses may be examined.

642. SEC. 162. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the Probate Judge, in the same manner and with like effect as in other causes.

Order of sale of part.

643. SEC. 163. If it shall appear to the Court that it is necessary to sell a part of the estate, real or personal, and that by a sale of such part the residue of the estate, or some specific part or piece thereof, would be greatly injured or diminished, or subject to expenses, or rendered unprofitable, the Court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interests of all concerned.

Of the whole real estate.

644. SEC. 164. If the Court shall be satisfied, after a full hearing upon the petition and on examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in sections one hundred and fifty-two and one hundred and fifty-six of this Act, or if such sale be assented to by all the persons interested, an order of sale shall be made, authorizing the executor or administrator to sell the whole, or so much and such parts of the real estate described in the petition as the Court shall judge necessary or beneficial.

Order to specify what.

645. SEC. 165. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash or on a credit not exceeding one year, payable in gross or installments, with interest, as the Court may direct. The tract or tracts of land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to said estate, unless the Court shall otherwise specially direct. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the Court shall order that part descended to the heirs to be sold before that so devised. Every such sale shall be ordered to be made at public auction, unless, in the opinion of the Court, it would benefit the said estate to sell the whole or some part of such real estate at private sale, in which case the Court, if the same is asked for in the petition, may order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for said estate. If the executor or administrator shall neglect or refuse to make a sale, under the order of sale, he may be compelled to proceed to sell by order of the Court made on motion, after due notice, by any party interested.

Persons interested may apply for order of sale.

646. SEC. 166. If the executor or administrator shall neglect to apply for an order of sale, whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing. The petition of such applicant shall contain as many of the matters set forth in section one hundred and fifty-seven of this Act as he can ascertain, and the decree of sale shall fix the period of time within which the executor or administrator shall make the sale.

Certified copy of order.

647. SEC. 167. Upon making such order mentioned in the last section, a certified copy of the order shall be delivered by the Court or the clerk to the executor or administrator, who shall be thereupon authorized and required to sell the real estate as directed.

Notice of time and place of sale.

648. SEC. 168. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the Court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty.

Where sale to be made.

649. SEC. 169. Such sale shall be made in the county where the land is situated, but when the tract of land is situated in two or more counties, it may be sold in either of said counties. The sale shall be made between the hours of nine o'clock in

Private sale.

the morning and the setting of the sun on the same day, and shall be made at public auction, unless the Court shall have ordered the real estate, or some part thereof, may be made either at public or private sale; but the same shall not be sold at private sale until after notice of the time and place and terms of such sale shall have been given according to law, as in cases of sales at public auction; nor shall such sale, at private sale, be made, unless the real estate to be sold shall have been appraised within a year previous to the time of such sale; nor shall the same be sold at private sale for more than ten per cent less than the appraised value thereof. If said real estate has not been so appraised, or if the Court shall be satisfied that the appraisement is too high or too low, appraisers shall be appointed, and they shall make an appraisement thereof in the same manner as in the case of the appraisement of the inventory.

Sale on credit.

650. SEC. 170. The executor or administrator shall, when the sale is made upon a credit, take the note or notes of the purchaser for the purchase money, with a mortgage on the property to secure their payments.

Sale may be vacated, when.

651. SEC. 171. The executor or administrator making any sale of any real estate, shall, at the next term of the Court thereafter, or at any subsequent sitting of the Court after making any such sale, upon notice of at least ten days, to be given in such manner as the Court or Judge may direct, make a return of his proceedings to the Probate Judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per centum, exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale and direct another to be had, of which notice shall be given, as provided in section one hundred and sixty-eight of said Act, and the sale shall be in all respects conducted as if no previous sale had taken place; *provided*, that if an offer of ten per centum, or more, exclusive of the expenses of a new sale, be made to the Court or Judge, in writing, by a responsible person, it shall be in the discretion of the Court or Judge to accept and confirm the sale to such person, or to order a new sale. [As amended December 19, Stats. 1852, p. 108.]

Objection to confirmation.

652. SEC. 172. When the return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation of the sale, and they may be heard on said first day of the term subsequent to the sale, or any subsequent day to which the matter may be continued, or upon any day that may be fixed by the order of the Court or Judge, and may produce witnesses in support of his objections.

Order confirming sale, record of.

653. SEC. 173. If it appear to the Court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified cannot be obtained, or if the advance bid mentioned in section one hundred and seventy-one of this Act, ([a]) be made and accepted by the Court, the Court shall make an order confirming the sale, and directing conveyances to be executed; and such sale

from that time shall be confirmed and valid, and a certified copy of the order authorizing the sale, and of the order confirming the same, and directing conveyances to be executed, shall be recorded in the office of the Recorder of the county within which the land sold is situated; *provided*, that if after such confirmation the purchaser shall neglect or refuse to comply with the terms of sale, the Court may, on motion of the executor or administrator, and after notice to the purchaser, order a new sale of the property sold to such purchaser. If the amount realized on such resale does not cover the bid and the expenses of the previous sale, such purchaser shall be liable for the deficiency.

(a) Section one hundred and seventy-three of said Act is hereby amended by striking out the words "sixty-nine" in said section, and inserting instead thereof the words "seventy-one." [Act of December 19, Stats. 1862, p. 108.]

654. SEC. 174. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator. They shall refer to the orders of the Probate Court authorizing and confirming the sale of the property of the testator or intestate, and directing conveyances thereof to be executed, and to the record of such orders in the office of the County Recorder, either by the date of such recording, or by the date and volume and page of such record, and such reference shall have the same effect as if the said orders were at large inserted in the conveyance. The conveyances so made shall be deemed to convey all the right, title, interest, and estate of the testator or intestate in the premises at the time of his death. When, however, by operation of law, or otherwise, the estate shall have acquired any right, title, or interest in the premises other than or in addition to that of the testator or intestate at the time of his death, such right, title, or interest shall also be passed by such conveyances. **Form and effect of conveyance**

655. SEC. 175. Before any order is entered confirming the sale, it shall be proved to the satisfaction of the Court that notice was given of the sale as herein prescribed, and the order of confirmation shall state that such proof was made. **Before confirmation notice of sale to be proven.**

656. SEC. 176. If, at the time appointed for the same, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale shall be postponed, he may adjourn the same from time to time, not exceeding in all, three months. **Postponement of sale.**

657. SEC. 177. In case of the adjournments, notice thereof shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment be for more than one day, further notice shall be given by posting notices, in three or more public places, in the county where the land is situated, or publishing the same, or both, as time and circumstances will admit. **Notice of.**

658. SEC. 178. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay a **Sale to pay legacies.**

legacy, together with his debts and the charges of administration, the executor or administrator with the will annexed, may obtain an order to sell his real estate for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter in case of a sale for the payment of debts.

Payment according to will.

659. SEC. 179. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

Order of Court not required when will names property to be sold.

660. SEC. 180. When such provision has been made, or any property directed by the will to be sold, whether for payment of debts or expenses, or for any other purpose, the executor or administrator with the will annexed, may proceed to sell, without the order of the Probate Court, but he shall be bound as an administrator to give notice of the sale, and to return accounts thereof to the Court, and to proceed in making the sale in all respects as if it were made under the order of the Court, unless there are special directions given in the will, in which case he shall be governed by such directions. But in all cases, no sale shall be valid unless confirmed by the Court, under the rules prescribed in cases of sales of real estate by an administrator; and before granting such confirmation, the Court may require security, as in cases of sales of land by an administrator.

When provision by will is insufficient.

661. SEC. 181. If the provisions made by the will, or the estate appropriated, be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this Act.

Estate liable for debts.

662. SEC. 182. The estate, real and personal, given by will to any legatees or devisees, shall be held liable to the payment of debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, except that specific devises or legacies may be exempted, if it shall appear to the Court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Contribution among legatees.

663. SEC. 183. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses; and the Probate Court, when distribution is made, shall, by decree for that purpose, settle the amount for the several liabilities, and decree how much each person shall contribute.

Interest in land under contract of purchase may be sold.

664. SEC. 184. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same pro-

ceedings may be had for that purpose as are prescribed in this chapter in respect to lands of which he died seized, except as hereinafter provided.

665. SEC. 185. Such sale shall be made subject to all payments that may thereafter become due on such contracts; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the Probate Judge until the purchasers shall execute a bond to the executor and administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the Probate Judge shall approve. **Such sale, how made.**

666. SEC. 186. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges, and expenses by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required by the purchaser. **Same.**

667. SEC. 187. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he were living. **Assignment of contract.**

668. SEC. 188. When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of land subject to any mortgage or lien, which is a valid claim against the estate of the deceased, the purchase money shall be applied, after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage or lien, and the residue in due course of administration. Such application of the purchase money to the satisfaction of the mortgage or lien shall be made without delay; and the land shall remain subject to such mortgage or lien until the purchase money shall have been actually so applied; *provided*, however, that when it shall be shown to be necessary, the Court may direct that sufficient of such purchase money be retained to meet such portions of the family allowance and charges, and expenses of administration, as may properly be required from the holder of such claims. Such reservation of a portion of the purchase money shall not prevent the discharge of the mortgage or lien, and no lien against any estate shall be affected by the Statute of Limitations, pending the proceedings for the settlement of such estate. **Sale of land subject to mortgage.**

669. SEC. 189. In all cases in which land is sold by an executor or administrator, the necessary expenses of the sale shall first be paid out of the proceeds. **Expenses of sale of land**

670. SEC. 190. If there shall be any neglect or misconduct in the proceedings of an executor in relation to any sale, by which any person interested in the estate shall suffer damages, **Misconduct in sale, damages for.**

the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

Fraudulent sale, liable for double the value as damages

671. SEC. 191. Any executor or administrator, who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person having an estate of inheritance therein.

Limitation of action for land sold.

672. SEC. 192. No action for the recovery of any estate, sold by an executor or administrator under the provisions of this chapter, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

Not to apply to minors, etc.

673. SEC. 193. The preceding section shall not apply to minors, or others under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within three years after the removal of the disability.

Account of sale, at next term.

674. SEC. 194. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the Probate Court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

Executor or administrator not to purchase.

675. SEC. 195. No executor or administrator shall, directly or indirectly, purchase any property of the estate he represented.

VII.—OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

They shall take possession of property.

676. SEC. 196. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and shall collect all debts due to the deceased. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors or administrators shall be deemed the possession of the heirs or devisees; such possession by the heirs or devisees shall be subject, however, to the posession of the executor or administrator for all other purposes. [As amended December 19, Stats. 1862, p. 108.]

May sue for, and be sued.

677. SEC. 197. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

May sue for trespass, etc.

678. SEC. 198. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also

maintain actions for trespass committed on the real estate of the deceased in his lifetime.

679. SEC. 199. Any person, or his personal representatives, shall have action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken, or carried away, or conveyed to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person. May be sued for waste, etc.

680. SEC. 200. When there was any partnership existing between the testator or intestate at the time of his death, and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership, and to settle its business, but the interest of the deceased shall be included in the inventory, and appraised as other property. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of his testator or intestate. Upon the application of the executor or administrator, the Probate Judge may, whenever it may appear necessary, order the surviving partner to render an account, and in case of neglect or refusal, may, after notice, compel it by attachment. And the executors or administrators may maintain against him any action which his testator or intestate could have maintained. Surviving partner may continue in possession.

681. SEC. 201. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate. Action on bond of executor or administrator.

682. SEC. 202. In actions brought by or against executors, it shall not be necessary to join those as parties to whom letters shall have been issued, and who have not qualified. Joinder of parties defendant.

683. SEC. 203. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the Probate Court or Judge, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects. A compromise may also be authorized, when it shall appear to be just and for the best interest of the estate. (a) Debts compounded.

(a) Under the two hundred and third section of the Probate Act an executor may pay money to compromise a suit pending against an estate. But he cannot lawfully make such payment without the previous consent of the Probate Court.—Lucich v. Medin, 3 Nev., p. 93.

When a party, who is executor of the estate of a deceased cotenant in common, pays money to compromise a suit about the common property without consulting the Probate Court, he will be held to have paid as a cotenant, and not as executor.—Id.

In such case, the heirs of the deceased cotenant will be allowed the option to approve the compromise, and contribute their share of the money paid on the compromise, or reject the same and depend on the testator's former title.—Id.

An executor cannot borrow money to speculate for an estate, unless specially authorized by the will to do so.—Id.

An executor having stock on hand liable to assessment, should either get an order of the Probate Court to sell it, or else, if the estate is surely solvent without the stock, turn it over to the legatees. He should not borrow money to pay the assessments.—Id.

On rehearing: *Held*, a Probate Court may correct its own errors in the settlement of estates, either in regard to matter of law or fact, at any time before final settlement, provided such correction can be made from the record without opening the proof in the case.—Id.

What appears on the face of an account and interlocutory decree to have been once settled, must remain closed, unless the record itself discloses some error.—Id.

The account of an executor or administrator must show the items of account, and not merely the general result of certain transactions.—Id.

An executor who came into possession of an estate in his fiduciary capacity, cannot buy up an adverse title to the estate, and withhold the rents on his mere *ipse dixit* that the title he has bought up is superior to that of his testator.—Id.

Recovery of property fraudulently disposed of.

684. SEC. 204. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditor all such real estate so fraudulently conveyed, and may, also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Same.

685. SEC. 205. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased; nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the Probate Judge shall direct.

Disposition of such property.

686. SEC. 206. All real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the Probate Court; and the proceeds of all goods, chattels, rights, and credits so recovered, shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

VIII.—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

687. SEC. 207. When any person, who is bound by contract, in writing, to convey any real estate, shall die before making the conveyance, the Probate Court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto in all cases where such deceased person, if living, might be compelled to make such conveyance. **Contract for sale to be completed.**

688. SEC. 208. On the presentation of a petition, by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the Probate Judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the Court; and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least four successive weeks before such hearing, in such newspaper in this Territory as he may designate. **Petition for**

689. SEC. 209. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit, or otherwise, of the due publication of the notice, the Court shall proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the Court may examine, on oath, the petitioner, and all who may be produced before him for that purpose. **Hearing of.**

690. SEC. 210. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the Court be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, the Court shall make a decree, authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner. **Order for conveyance**

691. SEC. 211. Any person interested may appeal from such decree to the District Court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed, in the office of the Recorder, in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance. **Appeal from order.**

692. SEC. 212. If, upon a hearing in the Probate Court, as hereinbefore provided, the Court shall doubt the right of the petitioner to have a specific performance of the contract, the Court shall dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in the District Court to enforce a specific performance. **Petition dismissed.**

693. SEC. 213. Every conveyance made in pursuance of a decree of the Probate Court, as provided in this chapter, shall **Effect of such conveyance.**

be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living and then executed the conveyance.

Effect of decree.

694. SEC. 214. A copy of the decree for a conveyance made by the Probate Court, and duly certified and recorded in the office of the Recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Enforcing decree.

695. SEC. 215. The recording of any decree, as provided above, shall not prevent the Court making such decree from enforcing the same by other process.

Death of party entitled to conveyance

696. SEC. 216. If the person to whom the conveyance was to be made, shall die before the commencement of the proceedings, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced, and the conveyance shall be so made as to vest the estate in the same person who would have been entitled to it, or in the executor or administrator for their benefit.

IX.—ACCOUNTS TO BE RENDERED BY EXECUTORS AND ADMINISTRATORS, AND PAYMENT OF DEBTS.

Executors and administrators personally liable for debts, when.

697. SEC. 217. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized. ([a])

(a) ACCOUNTABILITY OF EXECUTORS AND ADMINISTRATORS. While the law closely scrutinizes the acts of executors and administrators, and requires the utmost good faith from them in all their transactions with or on behalf of the estate, it does not require infallibility of judgment, nor rigorous accountability for any mishap which may occur during the administration.—Estate of Millenovich, 5 Nev., p. 161.

LIABILITY OF EXECUTORS FOR LOSSES.—If an executor, in the conscientious and judicious discharge of his duty, sustains a loss by reason of unfortunate circumstances, and not by reason of any violation of a positive requirement of law, he should not be held to strict personal account for such loss.—Id.

POSITIVE LAW MUST BE STRICTLY FOLLOWED BY EXECUTORS.—When the law has clearly pointed out a certain course to be pursued by executors, that course must be strictly followed; and if they disregard it they should be held to answer for any loss which the estate may suffer thereby, notwithstanding they may have been actuated by the best of motives.—Id.

ACT OF EXECUTORS IN GOOD FAITH WITHOUT ORDER OF COURT.—If an executor should, in good faith, do an act without an order of Court, which the law declares shall not be done without such order, and if the act be one which the Court would have approved or ordered done, and no injury has resulted from his action, he should not be chargeable with mismanagement of the estate.—Id.

SECONDARY EVIDENCE OF LOST JUDICIAL RECORDS.—Where an order of the Probate Court, necessary as an authorization to justify the acts of an executor, is lost, secondary evidence of its character is allowable.—Id.

LUCICH v. MEDIN, 3 Nev., p. 93—To the effect that a decree of settlement of the accounts of an executor or administrator closed all further investigation in respect to all accounts allowed, except where some error or mistake appeared upon the record, approved.—Id.

EXPENSES OF CONTESTS BETWEEN EXECUTORS.—The expenses incurred in a controversy between executors, one opposing the qualification of the others, are not just or proper charges against the estate.—Id.

ILLEGAL CLAIMS AGAINST ESTATES PARTLY PAID.—The fact that part of an illegal claim against the estate of a deceased person has been paid and allowed in a previous account of the executor, is no reason why the balance should be allowed on a subsequent account.—Id.

EXECUTORS COMPETENT WITNESSES ON THEIR OWN BEHALF.—An executor is not within the exception of the Act excluding persons as witnesses on their own behalf, where the opposite party is the representative of a deceased person, etc. (Stats. 1864-5, p. 77.)—Id.

COSTS ON CONTESTED SETTLEMENT OF EXECUTOR'S ACCOUNTS.—Where, in a contest as to the settlement of the accounts of an executor, the Court below deducted a considerable sum, and then allowed the balance of the accounts: *Held*, that the contestants were entitled to their costs.—Id.

CONSTRUCTION OF SECTION THREE HUNDRED AND ELEVEN OF PRACTICE ACT.—Section three hundred and eleven of the Practice Act does not conflict with section four hundred and forty-one of the same, which allows costs to the contestants of an executor's accounts as the prevailing parties, when they succeed in reducing the amounts allowed on settlement.—Id.

PAYMENT OF ASSESSMENTS ON MINING STOCKS BY EXECUTORS.—It is within the jurisdiction of the Probate Court to order payment of assessments legally levied upon mining stocks belonging to the estate of a deceased person; and if the executor act in obedience to such order, it would be inequitable to charge him personally with payments so made, or refuse to allow them as just payments made for the estate.—Id.

SETTLEMENT OF ACCOUNTS OF EXECUTORS—IRREGULARITIES IN PROCEEDINGS.—Irregularities in probate proceedings, which have not been prejudicial to the estate, should not influence the Court in the settlement of accounts, the main inquiry in such cases being whether the amounts charged are just and legal claims against the estate, and whether the executor has managed its affairs with good faith and ordinary prudence.—Id.

OBJECTIONS TO APPRAISERS NOT VALID OBJECTIONS TO EXECUTORS' ACCOUNTS.—That the appraisers of an estate were not disinterested parties, as by statute they are required to be, is no reason why the just accounts of the executor should not be settled and allowed.—Id.

CHARGES FOR REPAIRS MADE BY EXECUTORS.—If an executor be authorized to make repairs to the property of his testator's estate, and in so doing expend somewhat more than the real value of the improvements, yet if it appear that he acted in good faith, and exercised ordinary discretion and circumspection in the matter, an order of the Court below allowing the charge will not be disturbed on appeal.—Id.

LEASES BY EXECUTORS.—If an executor lease property belonging to the estate represented by him, it does not follow that he should lease to those who offer to pay the highest rent; the purposes for which the property is to be used, the responsibility of the lessee, the length of time for which he may agree to lease, and many other circumstances of the kind, must be taken into consideration.—Id.

FUNERAL EXPENSES.—In the settlement of executors' accounts for funeral expenses, all the circumstances of the case should be taken into consideration, and their accounts allowed, if they have acted with ordinary prudence and with a regard for decency and respectability, according to the condition in life of the deceased.—Id.

With what chargeable.

698. SEC. 218. Every executor and administrator shall be chargeable in his account with the whole of the estate of the deceased, which may come to his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Not to profit or lose by.

699. SEC. 219. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraisement, and if any shall be sold for less than the appraisement, he shall not be responsible for the loss, if the sale has been justly made.

Uncollected debts.

700. SEC. 220. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

701. SEC. 221. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services such fees as the law provides; but when the deceased shall, by his will, make some other provision for the compensation of his executors, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the Probate Court, renounce all claim for compensation provided by the will. Compensation.

702. SEC. 222. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid. Not to purchase claims.

703. SEC. 223. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent; for all above that sum, at the rate of four per cent, and the same commissions shall be allowed to administrators. In all cases such further allowance may be made as the Probate Judge may deem just and reasonable for any extraordinary services not required by an executor or administrator in the common course of his duty; *provided*, the total amount of such allowances shall not exceed the amount of commission allowed by this section. (1) Commission.

(1) The percentage allowed by law to administrators for collecting and disbursing money is one of the expenses of administration which should be allowed in preference even to funeral expenses.—Estate of Olaf Nicholson, 1 Nev., p. 518.

Attorneys' fees may or may not be properly charged among the expenses of administration, according to the particular circumstances of the case.

Insurance paid by an administrator on the property of a decedent, ought to be allowed as one of the expenses and charges of administration. But if money be paid for insurance under circumstances showing recklessness and want of proper care and prudence, the Court may properly refuse to allow it.

704. SEC. 224. At the third term of the Court, after his appointment, and thereafter at any time when required by the Court, either upon its own motion, or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the Court, an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs. Account to be rendered at third term.

705. SEC. 225. If the executor or administrator fail to render an exhibit at the third term of the Court, it shall be the Citation to appear, when.

duty of the Judge to cause a citation to be issued requiring him to appear and render it.

Exhibit of receipts. 706. SEC. 226. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the Probate Judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit should be made.

Citation for. 707. SEC. 227. If the Judge be satisfied, either from the oath of the applicant, or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which shall be during a term of the Court, and render an exhibit as prayed for.

Objection to exhibits. 708. SEC. 228. When an exhibit is rendered by an executor or administrator, any person interested may appear, and, by objection, in writing, contest any account or statement therein contained. The Court may examine the executor or administrator, and if he has been guilty of negligence, or has wasted or embezzled, or mismanaged the estate, his letters shall be revoked.

Attachment for disobeying citation. 709. SEC. 229. If any executor or administrator neglect or refuse to appear and render an exhibit, after having been duly cited, an attachment may be duly issued against him, or his letters may be revoked, in the discretion of the Court.

Full account at close of year, what to exhibit. 710. SEC. 230. Every executor or administrator shall render a full account and report of his administration upon the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the Court or Judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation has been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered shall exhibit not only the debts which may have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

Account after authority revoked. 711. SEC. 231. Whenever the authority of an executor or administrator shall cease or be revoked for any reason, he may be cited to account before the Probate Court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Although the same Court has jurisdiction, under our system, of cases at law, in equity, and in matters of probate, yet the several classes of cases must be kept separate, and a petition to the Court of Probate cannot be confounded with an action at law or a suit in chancery.—Lucich v. Medin, 3 Nev., p. 93.

This is a petition to the Probate Court, and if treated as a bill in equity there would be a fatal objection to it, to wit: that it was a bill filed to surcharge and falsify the accounts of an executor who had not yet made a final settlement.—Id.

An error in the names of the petitioners in a case in probate pending and undetermined, may be corrected. It is not such a fatal error as would be the bringing of a suit in the name of the wrong parties.—Id.

Waste, negligence, and mismanagement afford as good grounds for the removal of an executor as actual fraud.—Id.

If an executor qualify as such, and totally neglect his duties, he should be removed, although he has committed no positive act of wrong.—Id.

An executor who takes charge of an estate which is not in debt a dollar, except for the last sickness of the testator—which only lasted fifteen days—with cash assets on hand to the amount of four thousand three hundred dollars, and a monthly rental of five hundred dollars, and runs that estate behind to the extent of one thousand eight hundred dollars, in nineteen months, is prima facie unfit for the trust he is exercising.—Id.

An executor may employ counsel to attend to the litigation concerning the estate, but he has no right to employ counsel at the expense of the estate to keep the accounts and do that business for which he is compensated by his fees. If he is too ignorant to keep his own accounts, he must employ some one else to do it for him, and pay for the same out of his own percentage, which he is allowed for settling the estate.—Id.

712. SEC. 232. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after being committed where the attachment has been executed, his letters shall be revoked. **Revocation for failure to account.**

713. SEC. 233. In rendering his account the executor or administrator shall produce vouchers for all charges and expenses which he shall have paid, which vouchers shall be filed and remain in the Court; and he may be examined on oath, touching such payments, and also touching any property and effects of the deceased, and the disposition thereof. When any such voucher shall be required for other purposes, it may be withdrawn on leaving a certified copy on file; if any voucher be lost, or for other good reason the same cannot be produced on settlement, the payment may be proved by the oath of any competent witness. **Vouchers.**

714. SEC. 234. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positive to the fact of payment, specifying where and to whom the payment was made, and if such oath be uncontradicted; but such allowance, in the whole, shall not exceed five hundred dollars for payment in behalf of any one estate. **Items less than twenty dollars.**

Notice of settlement.

715. SEC. 235. When any account is rendered for settlement, the Court or Judge shall appoint a day for settlement thereof; the Clerk shall thereupon give notice thereof, by causing notices to be posted in at least three public places in the county. The notice shall set forth the name of the estate, and of the executor or administrator, and the day appointed for the settlement of the account, which shall be on some day of a term of a Court. The Court, or Probate Judge, may order such further notice to be given as he may deem proper.

Exceptions to account.

716. SEC. 236. On the day appointed, or any subsequent day to which the hearing may be adjourned by the Court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Minors, guardians for.

717. SEC. 237. If there be any minor interested in the estate, who has no legally appointed guardian, the Court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person having an interest might contest it, and who shall be allowed by the Court for his services a reasonable compensation. The Court shall, also, if it deems it necessary, appoint an attorney to represent the absent heirs and devisees. All matters, including allowed claims, not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown.

Referees to be appointed.

718. SEC. 238. The hearing and allegations of the respective parties may be adjourned from time to time, as shall be necessary, and the Court may appoint one or more referees to examine the accounts, and make report thereon, subject to confirmation, and may allow a reasonable compensation to such referees, to be paid out of the estate of the deceased.

Settlement conclusive.

719. SEC. 239. The settlement of the account, and the allowance thereof by the Court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall cease; and, in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness. (a)

(a) Section two hundred and thirty-nine of the Probate Act seems to provide that what is settled at one settlement of an executor's account shall not be open to resettlement at any future time in the Probate Court.—Lucich v. Medin, 3 Nev., p. 93.

The rule that a Probate Court cannot reinquire into that which has once been settled, only applies to those items of account which were properly before the Court for adjustment. The general result at which the Probate Court arrives is immaterial. It is only as to the items of account acted on that the doctrine of *res adjudicata* applies.—Id.

It has been held, a mistake in former settlement may be corrected in a subsequent one. The only difficulty in applying this rule is, to determine what shall be treated as a mistake, and what shall stand as *res adjudicata*. Perhaps the best rule is to say, everything may be corrected which shows on its face the mistake or error. This would allow the Court, before final settlement, to correct its own errors of judgment, but not to go *de novo* into proof of items already passed on.—Id.

Where an executor files an account showing a certain balance for or against an estate, but never settles the same; then files a second account, beginning with the balance drawn from the first, and there is a regular hearing and settlement of this second account; this can be held *res adjudicata* only as to the items of the second account (other than the balance with which it commences), and all the items of the first account are open to investigation.—Id.

720. SEC. 240. The account shall not be allowed by the Court until it be first proved that the notice has been given as required by this chapter, and the decree shall show that such proof was made to the satisfaction of the Court, and shall be conclusive evidence of the fact. **Proof of notice of.**

721. SEC. 241. The debts of the estate shall be paid in the following order: First—Funeral expenses. Second—The expenses of the last sickness. Third—Debts having preference by the laws of the United States. Fourth—Judgments rendered against the deceased in his lifetime, and mortgages in the order of their date. Fifth—All other demands against the estate. **Debts, order of payment.**

722. SEC. 242. The preference given in the preceding section to a mortgage shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate. **Preference to mortgages.**

723. SEC. 243. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid. **Dividends.**

724. SEC. 244. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands, to pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed in this Act, the payment has been ordered by the Court. **Funeral expenses.**

725. SEC. 245. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the Court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the Court shall specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account shall be considered as a final account, and the executor or administrator shall be entitled to his discharge, on producing **Order for payment to creditors.**

and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the Court.

Claims disputed or not due.

726. SEC. 246. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, or established, or absolute, shall be paid into the Court, where it shall remain, to be paid over to the party when he shall become entitled thereto, or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the estate require; *provided*, that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

Executor liable after decree.

727. SEC. 247. Whenever a decree shall be made by the Probate Court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree as upon a judgment in the District Court in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the District Court. The executor or administrator shall also be liable on his bond to each creditor.

Claims not included in order for payment.

728. SEC. 248. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order of payment shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator shall have failed to give notice to the creditors, as prescribed by this Act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed; *provided*, that this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Payment of legacies.

729. SEC. 249. If the whole of the debts shall have been paid by the first distribution, the Court shall proceed to direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reason, the estate be not in a proper condition to be closed, the Court shall give such extension of time as may be reasonable for a final settlement of the estate.

Final account.

730. SEC. 250. At the time designated in the last section, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator shall render a final account, and pray a settlement of his administration.

731. SEC. 251. If he neglects to render his account, the same proceedings may be had as prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement. Proceeding on neglect to render.

XI.—PARTITION AND DISTRIBUTION OF ESTATES.

732. SEC. 252. At any time after the lapse of four months after the issuing of letters testamentary or of administration, any heir, devisee, or legatee, may present his petition to the Court, that the legacy or share of the estate to which he is entitled may be given to him, upon his giving bonds with security for the payment of his proportion of the debts of the estate. Petition of heirs.

733. SEC. 253. Notice of the application shall be given to the executor or administrator personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator. Notice of.

734. SEC. 254. The executor or administrator, or any person interested in the estate, may appear and resist the application, or any other heir, devisee, or legatee, may make a similar application for himself. Who may resist.

735. SEC. 255. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them, without injury to the creditors of the estate, the Court shall make a decree in conformity with the prayer of the applicant or applicants; *provided*, each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the Probate Judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee, or devisee, whenever required, of his proportion of the debts due from the estate. Decree of distribution.

736. SEC. 256. Such decree may order the executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof. Same.

737. SEC. 257. If, in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed. Partition, when necessary.

738. SEC. 258. The costs of the proceedings authorized by the preceding sections, shall be paid by the applicant, or, if there be more than one, shall be apportioned equally amongst them. Cost of proceedings.

739. SEC. 259. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the Court for an order requiring the payment, and shall have a Payment of bond given.

citation issued and served on the party bound, requiring him to appear and show cause why an order shall not be made. At the hearing, the Court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Distribution, when made.

740. SEC. 260. Upon the final settlement of the accounts of the executor or administrator (or at any subsequent time, upon the application of the executor or administrator), or any heir, legatee, or devisee, or the grantee of the heir, legatee, or devisee, the Court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled. A statement of the receipts and disbursements of the executor or administrator, since the rendition of his final accounts, shall be reported and filed at the time of making such distribution, unless distribution of the real estate only be made, and a settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the Court, and shall be included in the decree, or the Court or Judge may order notice of the settlement of such supplementary account, and may refer the same, as in other cases of the settlement of accounts.

Form of decree.

741. SEC. 261. In the decree the Court shall name the persons, and the proportion or parts to which each shall be entitled, and such person shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

Decree, on whose petition made.

742. SEC. 262. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given, or waived, and proceedings had in the manner provided in sections one hundred and fifty-two to and including one hundred and ninety-five of this Act, in regard to an application for the sale of land by an executor or administrator. The Court may order such further notice to be given as it may deem proper. If partition be applied for, as hereinafter provided, such decree shall not divest the Court of jurisdiction for the purposes of partition, unless the estate be finally closed by the decree of distribution.

Estates in common.

743. SEC. 263. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, or when property of the estate shall be held in common and undivided with other parties, partition may be made by three disinterested persons, to be appointed commissioners for that purpose by the Court or Probate Judge, who shall be duly sworn to the faithful discharge of their duties by any officer authorized to administer oaths. A certified copy of the order of their appointment, and of the decree assigning and distributing the estate, shall be issued to them as their warrant, and their oath shall be indorsed thereon. Upon consent of the parties, and when the Court shall deem it proper and just, it shall be sufficient to appoint one commissioner only, who shall have the same authority and be governed by the same rules as if three were appointed.

744. SEC. 264. If the real estate shall be in different counties, the Probate Court may, if it shall judge proper, appoint different commissioners for each county; and, in such cases, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioner first appointed shall, unless otherwise directed by the Probate Court, make division of such real estate wherever situated within this Territory. In different counties.

745. SEC. 265. Such partition and distribution may be ordered on the petition of any of the persons interested; but before commissioners shall be appointed. or any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who shall reside in this Territory, or their guardians, and to agents, attorneys, or guardians, if there be any in this Territory, of such as reside out of the Territory, either personally or by public notice, as the Probate Court shall direct. The petition for partition may be filed at any time before the decree of distribution, and attorneys, guardians, and agents may be appointed, and notice be given, but the commissioners shall not be appointed until the decree has been made assigning the estate. But when the application is made solely to have partition between the estate administered upon and any other parties, such application may be made and such partition ordered at any time the Court may direct. Notice and petition. Partition ordered.

746. SEC. 266. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees. Partition when heirs part with interest.

747. SEC. 267. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided. Shares, how set out.

748. SEC. 268. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the Probate Court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger; *provided*, the party accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction, or, in case of the minority of such party or parties, then to the satisfaction of his or her guardian, and the true value of the estate shall be ascertained and reported by commissioners. All may be assigned to one, when.

749. SEC. 269. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections; *provided*, the party so accepting shall pay or secure to one or more of the others Payment for equalizing.

such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the Court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

Estates sold, proceeds divided.

750. SEC. 270. When it cannot otherwise be fairly divided, the whole, or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the Court may order a sale by the executor or administrator, or by a commissioner appointed for that purpose, and distribute the proceeds. The sale shall be conducted and reported upon, and confirmed, in the same manner and under the same rules as in ordinary cases of sales of land by an administrator under this Act.

Estates in common, how partitioned

751. SEC. 271. When partition of real estate among heirs or devisees shall be required, and such real estate shall be in common, and undivided with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division so made and established by the Probate Court, shall be binding upon all the persons interested. Upon application by petition of the heirs, or creditors, or any of them, the Probate Court may authorize the executor or administrator to bring suit for such partition in the District Court. Such suit may also be brought by the executor, when so authorized by the will.

Guardians to be appointed.

752. SEC. 272. Before every partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the Territory, or an attorney for all absent heirs and persons interested; and notice shall be given to all parties interested in the partition, their guardians, agents, and attorneys, by the commissioners, of the time when they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

Report of Commissioner.

753. SEC. 273. The commissioners shall make report of their proceedings, and of the partition agreed upon by them, to the Probate Court, in writing, and the Court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners, or appoint others; and when such report shall be finally confirmed, a certified copy of partition made thereon, attested by the Clerk, under the seal of the Court, shall be recorded in the office of the Recorder of the county where the lands lie.

Commissioners, when not necessary.

754. SEC. 274. When the Probate Court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint Commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition shall be made.

Advancements.

755. SEC. 275. All questions as to advancements made, or alleged to have been made, by the deceased to any heirs, may be heard and determined by the Probate Court, and shall be

specified in the decree assigning and distributing the estate, and in the warrant to the commissioners, and the final decree of the Probate Court, or in case of appeal to the Supreme Court, shall be binding on all parties interested in the estate.

756. SEC. 276. When any estate shall be assigned by decree of the Court, or distributed by commissioners, as provided in this chapter, to any person residing out of this Territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the Court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution. Agent for absentees.

757. SEC. 277. Such agent shall give a bond to the Judge of Probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the Court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses. Bond of.

758. SEC. 278. When the estate shall remain in the hands of the agent unclaimed for a year, it shall be sold under the order of the Court, and the proceeds, deducting the expenses of the sale, to be allowed by the Court, shall be paid into the Territorial Treasury. When the payment is made, the agent shall take from the Treasurer duplicate receipts, one of which he shall file in the office of the Territorial Auditor, and the other in the Probate Court. Unclaimed estates.

759. SEC. 279. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale, as required in the preceding section, and may be sued thereon by any person interested. Liability of agent.

760. SEC. 280. When any person shall appear and claim the money paid into the treasury, the Probate Court making the distribution, being first satisfied of his right, shall grant him a certificate under seal; and upon the presentation of the certificate to the Territorial Auditor, he shall draw his warrant on the Treasurer for the amount. Certificate to claimant for money paid into treasury.

761. SEC. 281. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the Court, all the property of the estate to the parties entitled, and performed all acts lawfully required of him, the Court shall make a decree discharging him from all liability to be incurred thereafter. Decree discharging executor or administrator.

762. SEC. 282. The final settlement of an estate shall not prevent a subsequent issuance of letters testamentary, or of administration with the will annexed, should other property of the estate be discovered, or should it become necessary or proper, from any cause, that letters should be again issued. Subsequent letters may issue.

XI.—REMOVAL OF EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

For embezzlement, etc.

763. SEC. 283. Whenever the Probate Judge has reason to believe, from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or has become incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate, or has long neglected to perform the necessary acts as such executor or administrator, it shall be his duty, by an order entered upon the minutes of the Court, to suspend the powers of such executor or administrator until the matter can be investigated.

Special administrator to be appointed.

764. SEC. 284. During the suspension of the powers of the executor or administrator, under the authority of the preceding section, the Probate Judge or Court may, if the condition of the estate requires it, appoint a special administrator to take charge of the effects of the estate, who shall give the bond, and account as other special administrators are required to do.

Proceedings on suspension.

765. SEC. 285. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the Court shall be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew, as the case may require.

Who may appear.

766. SEC. 286. At the hearing, any person interested in the estate may appear and file his allegations, in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the Court.

Executor absconding

767. SEC. 287. If the executor or administrator has absconded, or conceals himself, or has removed or absented himself from the Territory, notice may be given him of the pendency of the proceedings by publication, in such manner as the Court may direct; and the Court may proceed upon such notice as if the citation had been personally served.

Attachment to compel attendance.

768. SEC. 288. In the proceedings authorized by the preceding sections of this chapter, for the removal of an executor or administrator, the Court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

XII.—MISCELLANEOUS PROVISIONS.

Orders, etc., to be entered.

769. SEC. 289. All orders and decrees made by the Probate Court, during its terms, shall be entered at length in the minute book of the Court; and, also, all orders which the Probate Judge is empowered to make out of term time, and which are, by this Act, specially required to be so entered. Upon the close of each term, the Judge shall sign the minutes of the proceedings. When any publication is ordered, such publication

shall be made daily, or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this Act. The Court or Judge may, however, prescribe a less number of publications during the period prescribed.

Personal notice, how given.

770. SEC. 290. Whenever personal notice is required by this Act, or the Act to provide for the appointment and prescribe the duties of guardians, to be given to any party to a proceeding in the Probate Court, and no other mode of giving notice is prescribed, it shall be given by citation issued from the Court, signed by the Clerk, and under the seal of the Court, directed to the Sheriff of the proper county, and requiring him to cite such person to appear before the Court or Judge, as the case may be, at a time and place to be named in the citation; or the citation may be addressed directly to the party to be cited, and may be served in like manner as a summons issued from the District Court. In the body of the citation shall be briefly stated the nature or character of the proceeding.

Citation, how served and returned.

771. SEC. 291. The officer to whom the citation is directed shall serve it by delivering a copy to the person therein named, or to each of them, if there be more than one, and shall return the original to the Court, according to its direction, indorsing thereon the time and manner of service. All proofs of publication, or other mode or modes of giving notice or serving papers, may be made by the affidavit of any person competent to be a witness, which affidavit shall be filed, and shall constitute prima facie evidence of such publication or notice of service.

Same, five days notice.

772. SEC. 292. When no other time is specially prescribed, citation shall be served at least five days before the return day thereof.

Powers of Clerk of Court.

773. SEC. 293. Unless otherwise specially prescribed, the Clerk of the Probate Court shall have power to administer all oaths necessary and proper to be taken, touching any matter pending in the Probate Court, or in any manner connected with any proceedings of which the Court has jurisdiction, and he shall have power to issue citations and subpœnas upon the application of any party, without the order of the Judge, except in those cases in which such order is specially required by law for the issuing of a citation.

Writs and process.

774. SEC. 294. All writs and processes issued from the Probate Court, shall be signed by the Clerk and authenticated with the seal of the Court, except subpœnas, notices, and publications, which need not be under seal.

Practice, taking testimony in other county.

775. SEC. 295. The practice in the District Court shall be applicable to proceedings in the Probate Court, so far as the same does not conflict with any enactment specially applicable to the Probate Court, or is not inconsistent with the provisions of this Act, or the Act to provide for the appointment and prescribe the duties of guardians. For the purpose of taking the testimony of a witness or witnesses in other counties of this Territory, or in other States, Territories, and countries, a commission may be issued, whenever, in the discretion of the Court, or Probate Judge, the same may be ordered; and when ordered, the formalities attending the issuance, execution, and return thereof, shall be similar to those prescribed in the case of a commission issued from the District Court, so far as the same

are applicable. When issued ex parte, no cross interrogations shall be necessary, unless by direction of the Court or Probate Judge; nor shall notice be necessary unless the Court or Judge shall so order. The Court or Judge may annex cross interrogations, or may refer the matter to a referee, to be by him appointed for that purpose, and when notice is so ordered, the Court or Judge shall prescribe the mode of giving such notice, whether by personal service, or by posting notices, or by publication.

Issues of fact. 776. SEC. 296. All issues of fact shall be disposed of in the same manner as is by law provided upon the trial of issues of fact in the District Court. All questions of costs may be determined by the Probate Court, and execution may issue therefor, in accordance with the order of the Probate Court. Costs.

Attorney for minors, etc. 777. SEC. 297. When, upon any proceeding in an estate, an attorney has been appointed for minors and absent persons in interest in the estate, such attorney shall represent such parties in any subsequent proceedings had, unless on such subsequent proceedings another person be appointed, and provided such attorney be present in Court in such subsequent proceedings. When any such attorney has been appointed, and when the Probate Judge has appointed a referee to take proofs, make computation, or perform other service, a reasonable compensation may be allowed out of the estate to such attorney and to each referee for the services he may have rendered.

Decree setting aside homestead. Copy to be recorded. 778. SEC. 298. When a decree is rendered setting apart a homestead, or making distribution of real estate, or determining any other matter affecting the title to real estate, a certified copy of such decree shall be recorded in the office of the Recorder of the county in which the land is situated.

Appeal may be taken from any order, decree, etc. 779. SEC. 299. If any person interested in, or to be affected by, and who shall be aggrieved by any order, allowance, sentence, decree, or denial, of any Probate Court or Judge, or any other act in his official capacity, may appeal therefrom to the District Court of the judicial district in which said Probate Court is held. (a)

(a) Appeals to be taken to Supreme Court.

When and how taken. 780. SEC. 300. The appeal may be taken within twenty days after the order, allowance, sentence, decree, denial, or any other official act of the Probate Court or Judge, is made and entered in the minutes of the Court. It shall be made by filing with the Clerk of the Probate Court a notice stating the appeal from the order, decree, judgment, sentence, or allowance, or some specific part thereof, and by executing an undertaking in the same manner, and to the same effect, as upon appeal from the District Court to the Supreme Court.

When cognizable. 781. SEC. 301. Appeals shall be cognizable at the next term of the District Court which shall be holden after the expiration of twenty-four days after such appeal shall have been perfected.

Transcript on. 782. SEC. 302. Upon such appeal being perfected, and upon the Clerk of said Court being paid the fees allowed him by law for the services herein required of him, he shall immediately transmit to the Clerk of the District Court, under his official seal, a transcript of the record, proceedings, and all papers relative to the cause appealed from.

783. SEC. 303. The Court above may reverse or affirm, in whole or in part, the sentence or proceeding appealed from, and may make such decree or order thereon as the Judge of the Probate Court should have made, and shall remit the case to the Court from whence it came for further proceedings, unless such reversal or affirmance be appealed from, as hereinafter provided. **Proceedings may be reversed or affirmed.**

784. SEC. 304. If, upon hearing an appeal in the District Court, any question of fact shall occur that is proper for a jury to try, the Court shall, upon application, cause it to be tried by a jury upon such issue of fact, to be formed under the direction of the Court. **Jury trial.**

785. SEC. 305. If the decision be affirmed, the District Court shall award costs, to be paid by the party appealing, either personally or out of the estate of the deceased, as he shall direct. If the decision be reversed, costs shall, in like manner, be awarded against the party maintaining the decision of the Probate Judge or Court, either personally or out of the estate of the deceased. **Costs on appeal.**

786. SEC. 306. Such affirmance, or such reversal, shall be certified to the Probate Court or Judge, whose decision was appealed from, by the District Court, with the award of costs made by him. Such Probate Court or Judge shall enforce the payment of the costs so awarded, in the same manner as if such award had been made by him. **Judgment of Appellate Court.**

787. SEC. 307. Any person interested in, or affected by, and aggrieved by the decision of the District Court, affirming, reversing, or modifying the decision, sentence, or order of the Probate Court or Judge, may, in all cases where the amount involved exceeds one thousand dollars, exclusive of costs, appeal to the Supreme Court of this Territory. **Appeal to Supreme Court.**

788. SEC. 308. The appeal provided for in the preceding section may be taken within twenty days after the order, decree, or judgment is made and entered in the minutes of the Court. It shall be made by filing with the Clerk of the District Court a notice, stating the appeal from the order, decree, or judgment, or some specific part thereof, and by executing an undertaking, or giving surety on such appeal in the same manner and to the same extent as upon other appeals to the Supreme Court from the District Court. **When and how taken.**

789. SEC. 309. If a party, who has a right to appeal to the Supreme Court, wishes a statement of the case to be annexed to the record, he shall prepare and file the same within five days after the entry of the order, judgment, or decree. **Statement on appeal.**

790. SEC. 310. Upon an appeal from the District Court, as hereinbefore provided, the Appellate Court may reverse, affirm, or modify the judgment, order, or decree appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and shall certify the same to the District Court appealed from. **Judgment of Appellate Court.**

Costs.

791. SEC. 311. When it is not otherwise prescribed by law, the Probate Court, or the Supreme Court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the estate, as justice may require. Execution for costs may issue out of the Probate Court.

Appeal by executor or administrator, undertaking not required.

792. SEC. 312. The appeal of an executor or administrator to the District Court, or to the Supreme Court, as herein provided for, who has given an official bond, shall be complete and effectual without the undertaking hereinbefore required.

When executor, etc., removed. Acts valid. Successor of.

793. SEC. 313. When an order or decree appointing an executor or administrator, or guardian, shall be reversed on appeal, all lawful acts in administration upon the estate performed by such executor, administrator, or guardian, if he shall qualify, shall be as valid as if such order or decree had been affirmed. When any executor or administrator resigns, or is removed, a successor may be appointed, if a necessity therefor exists, without again proving the death and residence of the testator or intestate.

XII.—DESCENTS AND DISTRIBUTION.

Order of.

794. SEC. 314. When any person, having title to any estate not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her debts, in the following manner: First—If there be a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife, and child, or issue of such child. If there be a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child, by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share equally, otherwise they shall take according to the right of representation. Second—If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife, and to the intestate's father. If he or she shall leave no issue, or husband or wife, the estate shall go to his or her father. Third—If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister, by right of representation; *provided*, that if he or she shall leave a mother, also, she shall take an equal share with the brothers and sisters. Fourth—If the intestate shall leave no issue, nor husband, nor wife, nor father, and no brother or sister living at his or her death, the estate shall go to his or her mother, to the exclusion of the issue, if any, of deceased brothers or sisters. Fifth—If the intestate shall leave a surviving husband or wife, and no issue, and no father, mother, brother, or sister, the whole estate shall go to the surviving husband or wife. Sixth—If the intestate shall leave no issue, nor husband, nor wife, and no father,

mother, brother, nor sister, the estate shall go to the next of kin in equal degree; excepting, that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors shall be preferred to those claiming through an ancestor more remote; *provided*, however, Seventh—If any person shall die, leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die, under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation. Eighth—If, at the death of such child, who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally, otherwise they shall take according to the right of representation. Ninth—If the intestate shall leave no husband or wife, nor kindred, the estate shall escheat to the Territory, for the support of common schools. **Same.**

795. SEC. 315. Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child; and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family, in which case, such child and all the legitimate children, shall be considered as brothers and sisters, and on the death of either of them, intestate, and without issue, the others shall inherit his estate, and be heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the said children, as provided hereinbefore, in like manner as if all had been legitimate. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate. **Illegitimate child.**

796. SEC. 316. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law. **Heirs of illegitimate child.**

797. SEC. 317. The degrees of kindred shall be computed according to the rules of the civil law, and kindred of the half blood shall inherit equally with those of the whole blood, in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors, shall be excluded from such inheritance. **Degrees of kindred, how computed.**

Advancement. 798. SEC. 318. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child, or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child, or other lineal descendant, towards his share of the estate of the intestate.

Same. 799. SEC. 319. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Gifts and grants. Advancement. 800. SEC. 320. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or, if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

Same. 801. SEC. 321. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

Same. 802. SEC. 322. If any child or other lineal descendant so advanced shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced, in the like manner as if the advancement had been made directly to them.

Inheritance of husband and wife. 803. SEC. 323. The provisions of this Act, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate.

By right of representation. 804. SEC. 324. Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Escheated estates. 805. SEC. 325. If any person shall die, or any person who may have died within the limits of what is now the Territory of Nevada, seized of any real or personal estate, and leaving no heirs, representatives, or devisees, capable of inheriting or holding the same, and in all cases when there is no owner of such real estate capable of holding the same, such estate shall escheat to and be vested in this Territory.

When estates escheat. 806. SEC. 326. That whenever the Attorney General shall be informed, or shall have reason to believe, that any real estate hath escheated to this Territory, by reason that any person hath died seized thereof, and hath left no heirs capable of inheriting the same, or by reason of the incapacity of the devisees to hold the same; or when he shall be informed, or have reason to believe, that any such estate hath otherwise escheated to the Territory, it shall be his duty to file an information in behalf of the Territory, in the District Court of the judicial district in which such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last lawfully seized, the name of the terre-tenant and persons claiming such estate, if known, and the facts and circumstances in consequence of which said estate is claimed to have escheated, and alleging that by reason thereof the Territory of Nevada hath right, by law, to such estate; whereupon such Court shall award and issue a summons against such person or persons, bodies politic or corporate, alleged in such information to hold, possess, or claim such estate, requiring them to appear and show cause why such estate should not be vested in the Territory, within the time allowed by law in other civil cases, and the Court shall make an order, setting forth briefly the contents of said information, and requiring all persons interested in the estate to appear and show cause, if any they have, within thirty days from the date of said order, why the same should not vest in this Territory, which order shall be published, at least one month from the date thereof, in a newspaper published in said district (if one be published therein,) and in case no newspaper should be published in said district, by direction of the Judge, in some other newspaper in this Territory. Proceedings to inquire into.

807. SEC. 327. All persons, bodies politic and corporate, named in such information as terre-tenant, or claimant to the estate, may appear and plead to such proceedings, and may traverse or deny the facts stated in the information, the title of the Territory to lands and tenements therein mentioned, at any time on or before the third day of the return day of the summons; and any other person claiming an interest in such estate may appear and be made a defendant, and plead as aforesaid, by motion for that purpose in open Court, within the time allowed for pleading, as aforesaid; and if any person shall appear and plead, as aforesaid, or shall refuse to plead within the time, then judgment shall be rendered that the Territory be seized of the lands and tenements in such information claimed. But if any person shall appear and deny the title set up by the Territory, or traverse any material fact set forth in the information, or issue or issues shall be made up and tried as other issues of fact, and a survey may be ordered and entered as in other actions when the title or boundary is drawn in question; and if, after the issues are tried, it shall appear from the facts, found or admitted, that the Territory hath good title to the land and tenements in the information mentioned, or any part thereof, judgment shall be rendered that the Territory be seized thereof, and recover costs of suit against the defendants. Contesting same.

808. SEC. 328. Any party who shall have appeared to any proceedings, as aforesaid, and the Attorney General in behalf of the Territory, shall, respectively, have the same right to prosecute an appeal or writ of error, upon any judgment as aforesaid, as parties in other cases. Appeal may be taken.

809. SEC. 329. The Auditor of the Territory shall keep just and true accounts of all moneys paid into the treasury, all lands vested in the Territory, as aforesaid; and if any per- Controller to keep account of escheated estates.

Same may be claimed, when and by whom.

son shall appear within ten years after the death of the intestate, and claim any moneys paid into the treasury, as aforesaid, as heir or legal representative, such person may present a petition to the District Court at the seat of government, stating the nature of his claim, and praying such money may be paid him; a copy of such petition shall be served on the Attorney General, at least twenty days before the hearing of said petition, who shall put in answer to the same, and the Court thereupon shall examine said claim, and the allegations and proofs; and if the Court shall find that such person is entitled to any money paid into the Territorial Treasury, he shall, by an order, direct the Territorial Auditor to issue his warrant on the treasury for the payment of the same, but without interest or cost to the Territory; a copy of which order, under the seal of the Court, shall be a sufficient voucher for issuing such warrant; and if any person shall appear and claim land vested in the Territory, as aforesaid, within five years after the judgment was rendered, it shall be lawful for such person (other than such as was served with a summons, or appeared to the proceeding, their heirs or assigns), to file in the said District Court in which the lands claimed lie, a petition setting forth the nature of his claim, and praying that the said lands may be relinquished to him; a copy of which petition shall be served on the Attorney General, who shall put in an answer, and the Court thereupon shall examine said claim, allegations, and proofs, and if it shall appear that such person is entitled to such land claimed, the Court shall decree accordingly, which shall be effectual for divesting the interest of the Territory in or to the lands; but no costs shall be charged to the Territory; and all persons who shall fail to appear and file their petition within the time limited, as aforesaid, shall be forever barred; saving, however, infants, married women, and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petition, as aforesaid, at any time within five years after their respective disabilities are removed; *provided*, however, that the Legislature may cause such lands to be sold at any time after seizure, in such manner as may be provided by law; in which case the claimants shall be entitled to the proceeds, in lieu of such lands, upon obtaining a decree or order, as aforesaid.

Legislature may cause lands to be sold.

Receivers may be appointed.

810. SEC. 330. The said District Court, upon the filing of said information and application of the Attorney General, either before or after answer, upon notice to the party or parties claiming such estate, if known, may, sufficient cause therefor being shown, appoint a receiver to take charge and receive the rents and profits of the same, until the title to such real estate shall be finally settled.

Information to Attorney General.

811. SEC. 331. Any person furnishing original information to the Attorney General of the escheating of any property to the Territory, together with the necessary evidence to sustain the action of the Territory in such behalf, shall be entitled to receive, upon the final recovery of such property, five per centum of the property so recovered; *provided*, that the amount so received by the person or persons furnishing such information, shall not, in the aggregate, exceed the sum of twenty thousand

Compensation for.

dollars in any one case; *and, provided,* that only one person shall be entitled to compensation for such services.

812. SEC. 332. All moneys which have accrued, or may hereafter accrue to this Territory, from escheated estates, shall be paid into the General Fund, and, if need be, in the defrayment of the current expenses of the government and the redemption of Auditor's warrants.

Disposition of money arising from escheated estates.

An Act to authorize the administrator of the estate of Austin A. Chauncy to execute deed to certain real estate.—See Stats. 1862, p. 39.

CHAPTER XXXVII.

OF WILLS.

SECTION 812.† Who may make wills.
813. Wills of married women.
814. Valid wills.
815. Legacies, gifts, etc.
816. Nuncupative wills.
817. Proof of.
818. Probate of.
819. Revocation of wills.
820. Second wills.
821. Effect of marriage on wills.
822. Same.
823. Bond, covenant, etc.
824. Mortgage not a revocation.
825. Children born after wills made to share.
826. Children unprovided for to share.
827. After-born children, how provided for.
828. Same.
829. Devisee dying, descendants inherit.
830. Devise of land.
831. After-acquired property.
832. Will defined.

An Act concerning wills.

[Approved December 19, 1862, p. 58.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

812.† SECTION 1. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his or her estate, real and personal, the same being chargeable with the payment of the testator's debts.

Who may make wills.

Wills of married women. 813. SEC. 2. Any married woman may dispose of all her separate estate by will, absolutely, without the consent of her husband, either express or implied, and may alter or revoke the same in like manner as a person under no disability may do. Her will must be attested, witnessed, and proved in like manner as all other wills. [As amended, Stats. 1873, p. 102.]

Valid wills. 814. SEC. 3. No will, except such nuncupative wills as are mentioned in this Act, shall be valid unless it be in writing, and signed by the testator, and sealed with his seal, or by some person in his presence, and by his express direction, and attested by at least two competent witnesses, subscribing their names to the will in the presence of the testator.

Legacies, gifts, etc. 815. SEC. 4. All beneficial devises, legacies, and gifts, whatsoever, made or given in any will to a subscribing witness thereto, shall be void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

Nuncupative wills. 816. SEC. 5. No nuncupative or verbal will shall be good where the estate bequeathed exceeds the value of one thousand dollars, nor unless the same be proved by two witnesses who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid some one present to bear witness that such was his will, or words of like import, nor unless such nuncupative will was made at the time of the last sickness of the deceased.

Proof of. 817. SEC. 6. No proof shall be received of any nuncupative will unless it be offered within three months after speaking the testamentary words.

Probate of. 818. SEC. 7. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved unless the testamentary words, or the substance thereof, be first committed to writing by the Probate Judge, and process be issued to call in the widow, should she be a resident of the Territory, or other person or persons interested as heirs of the testator, residing in the Territory, to contest the probate of such will, if they think proper. (a)

(a) District Courts have jurisdiction in the probating of wills.—Sec. 934, post.

Revocation of wills. 819. SEC. 8. No will in writing shall be revoked unless by burning, tearing, canceling, or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence, or by his direction, or by some other will or codicil in writing, executed as prescribed by this Act; but nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Second wills. 820. SEC. 9. If, after the making of any will, the testator shall duly make and execute a second will, the destruction, canceling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, canceling, or revocation the first will shall be duly reëxecuted.

821. SEC. 10. If, after the making of any will, the testator shall marry, and the wife shall be living at the death of the testator, such will shall be deemed revoked unless she shall be provided for in the will, or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of such revocation shall be received. **Effect of marriage on wills.**

822. SEC. 11. A will executed by an unmarried woman shall be deemed revoked on her subsequent marriage, and shall not be revived by the death of her husband. **Same.**

823. SEC. 12. A bond, covenant, or agreement, made by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, if the same had descended to them. **Bond, covenant, etc.**

824. SEC. 13. A charge or incumbrance upon any estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate which was previously executed, but the devise and legacies therein contained shall pass, subject to such charge or incumbrance. **Mortgage not a revocation.**

825. SEC. 14. When any child shall have been born after the making of its parent's will, and no provision shall be made for him or her therein, such child shall have the same share in the estate of the testator as if the testator had died intestate, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child. **Children born after wills made to share.**

826. SEC. 15. When any testator shall omit to provide in his or her will for any of his or her children, or for the issue of any deceased child, unless it shall appear that such omission was intentional, such child, or the issue of such child, shall have the same share in the estate of the testator as if he or she had died intestate. **Children unprovided for to share.**

827. SEC. 16. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child or the issue of a child omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest or other provision in the will would thereby be defeated; in such case, such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted. **After-born children, how provided for.**

Same.

828. SEC. 17. If such child or children, or their descendants, so unprovided for, shall have had an equal proportion of the testator's estate bestowed upon them in the testator's lifetime, by way of advancement, they shall take nothing in virtue of the provisions of the three preceding sections.

Devisee dying, descendants inherit.

829. SEC. 18. When any estate shall be devised to any child or other relation of the testator, and the devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate so given by the will, in the same manner as the devisee would have done if he would have survived the testator.

Devise of land.

830. SEC. 19. Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

After-acquired property.

831. SEC. 20. Any estate, right, or interest in lands acquired by the testator, after the making of his or her will, shall pass thereby, in like manner as if it passed at the time of making the will, if such should manifestly appear by the will to have been the intention of the testator.

Will defined.

832. SEC. 21. The term "will," as used in this Act, shall be so construed as to include all codicils as well as wills.

Last will and testament of Henry Sticknorth legalized.—Stats. 1871, p. 129.

CHAPTER XXXVIII.

OF THE APPOINTMENT OF GUARDIANS.

SECTION 833. Guardians, how appointed.
834. When minor may nominate.
835. When Judge may appoint.
836. Minor at age of fourteen may appoint.
837. Parent entitled to guardianship.
838. Minor having no parents living.
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843. Testamentary guardian.
844. Guardians *pendente lite.*
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846. Proceedings on such application.
847. Powers and duties of such guardians.
848. Debts of ward, how paid.
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850. Management of estate.

SECTION 851. Partition of real estate.
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871. Guardianship, how terminated.
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876. Non-resident minors, guardians for.
877. Powers and duties of such guardians.
878. Bond.
879. Guardianship, extent of.
880. Expenses and compensation.
881. More than one guardian.
882. Accounts, allowance of.
883. Conditions of sale of real estate of minors.

An Act entitled an Act to provide for the appointment and prescribe the duties of guardians. ([a])

[Approved November 29, 1861, p. 255.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

833. SECTION 1. The Probate Judge of each county, when it shall appear necessary or convenient, may appoint guardians to the persons and the estates, or either of them, of minors who have no guardians legally appointed by will, and who are inhabitants or residents in the county, or who shall reside without the Territory, and have any estate within the county. Such appointment may be made upon the application by petition of a relative, or any person interested in or befriending such minor. Before making such appointment, the Judge shall cause such notice to be given to the relatives of the minor residing

Guardians, how appointed.

in the county, and to any person under whose care such minor may be, as he shall, on due inquiry, deem responsible.

(a) Justices of the Peace may appoint guardian, when necessary, in civil cases.—See Civil Practice Act, Sec. 1576, post.

When minor may nominate. 834. SEC. 2. If the minor is under the age of fourteen years, the Probate Judge may nominate and appoint his guardian; and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the Judge, shall be appointed accordingly.

When Judge may appoint. 835. SEC. 3. If the guardian nominated by the minor shall not be approved by the Judge, or if the minor shall reside out of the Territory, or if, after being duly cited by the Judge, he shall neglect for ten days to nominate a suitable person, the Judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years.

Minor at age of fourteen may appoint. 836. SEC. 4. When a guardian has been appointed by the Court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the Probate Judge.

Parent entitled to guardianship. 837. SEC. 5. The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the guardianship of the minor.

Minor having no parents living. 838. SEC. 6. If the minor have no father or mother living and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

Powers of guardian. 839. SEC. 7. Every guardian appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of his estate, until such minor shall arrive at the age of twenty-one years, or shall marry, or until the guardian shall be discharged according to law.

Bond of guardian. 840. SEC. 8. Before the order appointing any person guardian, under this Act, shall take effect, and before letters shall issue, the Judge shall require of each person a bond to the minor, with sufficient sureties, to be approved by the Judge, and in such sum as he shall order; and when the penal sum of the bond exceeds two thousand dollars, each of the sureties may become liable for portions thereof, making in the aggregate the whole penal sum; and said bond shall be conditioned that the guardian shall faithfully execute the duties of his trust according to law. And the following conditions shall be deemed to form a part of such bond, without being expressed therein: First—To make a true inventory of all the estate, real and personal, of his ward, that shall come to his possession or knowledge, and to return the same within such time as the Judge shall order. Second—To dispose of and manage all such estate according to law, and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward. Third—To render an account on oath of the property, estate,

Conditions.

and moneys of the ward, in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the Court shall direct; and, fourth, at the expiration of his trust, to settle his accounts with the Probate Judge, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto. Upon filing such bond, duly approved letters of guardianship shall issue to the person appointed. In form, the letters of guardianship shall be substantially the same as letters of administration, and the oath of the guardian shall be indorsed thereon, that he will perform the duties of his office, as such guardian, according to law. Same.

841. SEC. 9. All the provisions of sections eighty to eighty-nine, inclusive, of the "Act to regulate the settlement of the estates of deceased persons," are hereby declared to apply to guardians appointed in pursuance of this Act, and to the bonds taken, or to be taken, from such guardians, and to the sureties on such bonds. (a) Act made applicable.

(a) See Secs. 560 to 569.

ACTION AGAINST GUARDIAN FOR PROCEEDS OF REAL ESTATE SOLD.—A ward, on obtaining his majority, brought suit against his guardian and the sureties on his general bond, to recover moneys received by the guardian on the sale of the ward's real estate, and not accounted for. *Held*, that the suit could not be maintained on the general bond, for the reason that the sale of real estate was not one of the general duties of a guardian, and that therefore a nonsuit was properly granted. Henderson v. Cooper, 4 Nev. p. 429.

GENERAL AND SPECIAL DUTIES AND BONDS OF GUARDIANS. The general duties of a guardian do not include the sale of the ward's real estate; and he has no right to sell such real estate except upon special license from the Probate Court; and no valid sale can take place until a special bond for the faithful application of the proceeds is given; and for such faithful application the sureties on the special bond only, and not those on the general bond, are bound.—Id.

LIABILITY OF SURETIES ON GENERAL BOND OF GUARDIAN. Though the general bond of a guardian is conditioned for the payment and delivery by him of "all the estate, moneys, and effects remaining in his hands, or due from him on final settlement," it does not make the sureties responsible for the misapplication of moneys arising from the sale of real estate, for the reason that the sale and application of the proceeds of real estate are not general duties of a guardian.—Id.

842. SEC. 10. If any minor, who has a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the Minors, maintenance of

expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable and shall be directed by the Probate Court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Testamentary guardian. 843. SEC. 11. The father of any child who is a minor may, by his last will and testament, appoint a guardian or guardians, of such child, whether born before or after the time of making such will, and in case of the death of the father, the mother of such child may, in like manner, appoint a guardian or guardians, if such child shall not then have any legally appointed guardian; and every testamentary guardian shall give bond and qualify, and shall have the same powers, and perform the same duties, with regard to the person and the estate of such minor, as guardians appointed by the Probate Court, except as far as the said powers and duties may have been legally modified, enlarged, or changed, by the will by which such guardian was appointed.

Guardians pendente lite. 844. SEC. 12. Nothing contained in this Act shall affect or impair the power of any Court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein; nor to appoint or allow any person, as the next friend of a minor, to commence and prosecute any suit in his behalf.

Guardians of non compos mentis. 845. SEC. 13. Whenever it shall be represented to the Probate Judge, upon petition, under oath, by any relative or friend of any insane person, or of any person who, by reason of extreme old age, or other cause, is mentally incompetent to manage his property, that such person is insane, or mentally incompetent to manage his property, said Judge shall cause a notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed; and shall also cause such person, if able to attend, to be produced before him on the hearing.

Proceedings on such application 846. SEC. 14. If, after a full hearing and examination upon such petition, it shall appear to the Probate Judge that the person in question is incapable of taking care of himself and managing his property, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Powers and duties of such guardians. 847. SEC. 15. Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate, until such guardian shall be legally discharged; and he shall give bond to such ward, in like manner and with like conditions as before prescribed with respect to the guardian of a minor.

Debts of ward, how paid. 848. SEC. 16. Every guardian appointed under the provisions of this Act, whether for a minor or any other person, shall pay all just debts due from the ward, out of his personal estate, and the income of his real estate, if sufficient; and if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided by law.

849. SEC. 17. Every such guardian shall also settle all accounts of the ward, and demand, sue for, and receive all debts

Settlement of estate.

due to him; or may, with the approbation of the Probate Judge, compound for the same and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose as guardian or next friend.

Management of estate.

850. SEC. 18. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Partition of real estate.

851. SEC. 19. The guardian may join in and assent to a partition of the real estate of the ward, in the cases and in the manner provided by law.

Inventory of estate.

852. SEC. 20. Every guardian shall return to the Probate Court an inventory of the estate of his ward, within three months after his appointment, and at such other times as the Probate Court may order, and he shall return to said Court such additional inventories, whenever any further property belonging to said estate, not included in previous inventories, shall come to his hands; and if there be no estate, he shall return the fact under oath. Each of such inventories shall be sworn to by the guardian, and the property comprised therein shall be appraised by appraisers, who shall be appointed and shall proceed in the manner provided by laws regulating the settlement of the estates of deceased persons, and, when so appraised, it shall be recorded by the Clerk of the Probate Court in a proper book kept in his office for that purpose.

When estate may be sold.

853. SEC. 21. When the income of the estate of any person under guardianship shall not be sufficient to maintain the ward and his family, or to educate his family, or to educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor, and proceeding therein as provided in this Act.

Same.

854. SEC. 22. When it shall appear to the satisfaction of the Court, upon the petition of the guardian, that it would be for the benefit of his ward that his real estate, or some portion thereof, should be sold, in order that the proceeds thereof may be put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of said ward, his guardian may sell the same for such purpose, upon obtaining an order therefor, and proceeding therein as provided in this Act.

Proceeds, how applied.

855. SEC. 23. If the estate is sold for the purpose mentioned in the twentieth section of this Act, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when

a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Same. 856. SEC. 24. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in this Act, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the Probate Court.

Order for sale. 857. SEC. 25 To obtain an order for such sale, the guardian shall present to the Probate Court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner.

How obtained. 858. SEC. 26. If it shall appear to the Court or Judge, from such petition, that it is necessary or would be beneficial to the ward that such real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the Court or Judge shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such Court at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it would be necessary, or would be beneficial to the ward, to sell the personal estate, or some part of it, the same proceedings shall thereupon be had in reference to notice of the application, and to ordering a sale, and making such sales as are provided in relation to sales of personal estate by executors or administrators.

Proceedings on application.

Notice of. 859. SEC. 27. A copy of the order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition; or shall be published at least three successive weeks in some newspaper printed in the county, to be designated by the Court or Judge; or if there be none printed in the county, then in such newspaper as may be specified by the Court or Judge in such order. (a)

(a) Personal notice, how given, Sec. 770.

Hearing. 860. SEC. 28. The Probate Court, at the time and place appointed in such order, or such other time as the hearing shall be adjourned to, upon proof of the due service or publication of the order, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and all other persons interested in the estate, who shall think proper to oppose the application.

Guardian may be examined. 861. SEC. 29. On such hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the Probate Judge, in the same manner and with like effect as in other cases.

Costs. 862. SEC. 30. If any person shall appear and object to the granting of any order prayed for under the provisions of this Act, and it shall appear to the Court that either the petition or the objection thereto is unreasonable, said Court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

863. SEC. 31. If, after a full examination, it shall appear to the Court, either that it is necessary or would be for the benefit of the ward that his real estate, or some part of it, should be sold, such Court may grant an order therefor, specifying therein for which of the causes or reasons mentioned in sections twenty and twenty-one of said Act said sale is necessary or proper; and said Court may, if the same has been prayed for in the petition, order such sale to be made, either at public or private sale, upon like proceedings and in the manner as provided by law in case of a sale of real estate by an executor or administrator, and subject to the same proceedings in relation to the confirmation or rejection of the sale, or the resale thereof. When order for sale may be granted.

864. SEC. 32. Every guardian authorized to sell real estate, as aforesaid, shall, before the sale, give bond to the Probate Judge, with sufficient security, to be approved by such Judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators; and to account for and dispose of the proceeds of the sale in the manner provided by law. To give bond before sale.

865. SEC. 33. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as prescribed in the case of a sale of land by an executor or administrator; the same proceedings shall be had as to the return of the sale and the confirmation thereof, and the order to execute a conveyance, as is prescribed in regard to sales of land made by executors or administrators, and the confirmation shall have the same force and effect. Notice of sale. Return.

866. SEC. 34. No order of sale, granted in pursuance of this Act, shall be in force more than one year after granting the same. Order, time in force.

867. SEC. 35. No action for the recovery of any estate, sold by a guardian under the provisions of this Act, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within three years next after the termination of the guardianship, excepting only that minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within three years next after the removal of their respective disabilities. Limitation of actions for recovery of property sold.

868. SEC. 36. The guardian shall, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the Probate Court for settlement and allowance; and all the laws relative to the accounts of executors and administrators shall govern in regard to the accounts of a guardian, so far as they can be made applicable. Settlement of guardian

869. SEC. 37. The Probate Court, on the application of a guardian, or of any person interested in the estate of any ward, after such notice to all persons interested therein as the Pro- Investment of proceeds of sale.

bate Judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and also any other money in his hands, in real estate, or in any other manner that shall be most to the interest of all concerned therein; and the said Probate Court may make such further orders, and give such directions as the case may require, for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Removal or resignation

870. SEC. 38. When any guardian, appointed either by the testator or by the Probate Judge, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, or shall have wasted or mismanaged the estate, the Probate Judge, after notice to the guardian, may remove him; and every guardian may, upon request, be allowed to resign his trust, when it shall appear to the Probate Judge proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the Probate Judge may appoint another in his place.

Guardianship, how terminated

871. SEC. 39. The marriage of any person who is under guardianship as a minor shall terminate such guardianship; and the guardian of any insane person, or other person, may be discharged by the Probate Judge when it shall appear to him, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

Required to renew bonds.

872. SEC. 40. The Probate Judge may require a new bond to be given by any guardian, whenever he shall deem it necessary, and may discharge the existing sureties from further liability, after due notice given, as such Court may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Where bonds to be filed.

873. SEC. 41. Every bond given by a guardian shall be filed and preserved in the office of the Clerk of the Probate Court of the county; and in case of the breach of any condition thereof, may be prosecuted in the name of the ward, for the use and benefit of such ward, or of any person interested in the estate.

Limitation of actions on bond.

874. SEC. 42. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within three years from the time when the guardian shall have been discharged; *provided*, that if at the time of such discharge, the person entitled to bring such action shall be under any legal disability to sue, the action may be commenced at any time within three years after such disability be removed.

Embezzling property of ward.

875. SEC. 43. Upon complaint made to the Probate Judge by any guardian, or by the ward, or by any creditor, or by any other person interested in the estate, or by any person having any prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or any instrument in writing belonging to the ward, the Judge may cite and examine such suspected person, and proceed with him as to such charge in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

876. SEC. 44. When any minor, or other person liable to be put under guardianship, according to the provisions of this Act, shall reside without this Territory, and shall have any estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the Probate Judge of any county in which there may be any estate of such absent person, and after notice given to all interested, in such manner as the Judge shall order, by publication or otherwise, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person. Non-resident minors, guardians for.

877. SEC. 45. Every guardian appointed under the provisions of the preceding section shall have the same powers and perform the same duties, with respect to any estate of the ward that shall be found within this Territory, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this Act. Powers and duties of such guardians.

878. SEC. 46. Every such guardian shall give bond to the ward, in the manner and with the like condition as hereinbefore provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and such effects as shall come to his hands in this Territory. Bond.

879. SEC. 47. The guardianship which shall be first lawfully granted, of any person residing without this Territory, shall extend to all the estate of the ward within the same, and shall include the jurisdiction of the Probate Court of every other county. Guardianship, extent of.

880. SEC. 48. Every guardian shall be allowed the amount of his reasonable expenses, incurred in the execution of his trust, and he shall also have such compensation for his services as the Court in which his accounts are settled shall deem to be just and reasonable. Expenses and compensation.

881. SEC. 49. The Court, in its discretion, whenever the same shall appear necessary, may appoint more than one guardian of any person subject to guardianship, who shall give bond and be governed and liable in all respects as is provided respecting a sole guardian. More than one guardian.

882. SEC. 50. When an account is rendered by two or more joint guardians, the Probate Judge may, in his discretion, allow the same upon the oath of any of them. Accounts, allowance of.

883. SEC. 51. All sales of real estate of minor heirs, made for the benefit of said minor heirs, in accordance with the provisions of this Act, shall be for cash, or for part cash and part deferred payments, not to exceed three years, bearing date from date of sale, as in the discretion of the Probate Judge may be most beneficial to said minor heirs. Guardians making the sales aforesaid shall demand and receive from the purchasers bond and mortgage on the real estate so sold, with such additional security as the Judge may deem necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon. Conditions of sale of real estate of minors.

CHAPTER XXXIX.

OF ATTORNEYS AND COUNSELORS AT LAW.

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An Act relative to attorneys and counselors at law.

[Approved October 31, 1861, p. 6.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Designation.

884. SECTION 1. All persons admitted to practice in any of the Courts of this Territory shall be known as attorneys and counselors at law.

Who may be admitted.

885. SEC. 2. Any white male citizen, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, shall be entitled to admission as attorney and counselor in all the Courts of this Territory.

Qualification of.

886. SEC. 3. Every applicant for admission as attorney and counselor shall produce satisfactory testimonials of good

moral character, and undergo such examination as to his qualifications as the Supreme Court may direct; *provided*, that such examination and testimonials may be dispensed with at the discretion of said Court. [As amended March 4, Stats. 1871, p. 148.]

887. SEC. 4. If he be duly qualified, the Court shall admit him as attorney and counselor in all the Courts of the State, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the Clerk of the Court, which certificate shall be his license. [As amended March 4, Stats. 1871, p. 148.] **How licensed.**

888. SEC. 5. Any District Court of this State may order to be entered upon its roll of attorneys the name of any person who shall produce a license given to him by the Clerk of the Supreme Court, as in this Act provided. [As amended March 4, Stats. 1871, p. 148.] **To be entered on roll.**

889. SEC. 6. Every person, before receiving a license to practice law, shall take, before some officer authorized by the laws of this State to administer oaths, the oath prescribed by law, and after procuring the State Controller's order on the State Treasurer, to receive the same, pay over to the said State Treasurer the sum of twenty-five dollars, for the use of the State Library Fund; and the Clerk of the Court shall require of the person so admitted the clearance of the State Controller, certifying the payment of said twenty-five dollars into the State Treasury, before issuing such license, and in no case shall the license be issued until such clearance is filed in the office of the Clerk. [As amended March 3, Stats. 1873, p. 114.] **Oath and license.**

890. SEC. 7. The examination may be dispensed with in the case of a person who has been admitted attorney and counselor in the highest Courts of a sister State or Territory; his affidavit of such admission, or his license showing the same, shall be deemed sufficient to entitle him to admission. **Examination dispensed with.**

891. SEC. 8. Each Clerk shall keep a roll of attorneys and counselors of the Court of which he is Clerk, which shall be a record of the Court. **Roll to be kept.**

892. SEC. 9. If any person shall practice law in any Court in this State, except a Justice's, Recorder's, or Municipal Court, without having received a license as attorney and counselor, after admission by the Supreme Court, he shall be deemed guilty of a contempt of Court, and punished as in other cases of contempt, and shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined one hundred dollars or imprisoned in the County Jail fifty days. [As amended March 4, Stats. 1871, p. 148.] **Practicing without license.** **Penalty.**

A Judge of District or Supreme Court shall not act as an attorney or counselor in any Court, except he is a party on the record. A Judge or Justice of the Peace shall not have a partner acting as an attorney in any Court.—Secs. 951, 952.

893. SEC. 10. An attorney and counselor shall have authority: First—To bind his client in any of the steps of an action or proceeding, by his agreement filed with the Clerk, or entered upon the minutes of the Court, and not otherwise. Second—To **Authority of attorney.**

receive money claimed by his client in an action or proceeding during the pendency thereof, or within one year after judgment and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction in the judgment.

Change of. 894. SEC. 11. The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows: First—Upon his own consent, filed with the Clerk or entered upon the minutes. Second—Upon the order of the Court or Judge thereof on the application of the client.

Notice of change. 895. SEC. 12. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then he shall be bound to recognize the former attorney.

Death or removal. 896. SEC. 13. When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney shall, before any further proceedings be had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

How removed. 897. SEC. 14. An attorney and counselor may be removed or suspended by the Supreme Court, and by no other Court in the Territory, for either of the following causes arising after his admission to practice: First—Upon his being convicted of felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence. Second—For willful disobedience or violation of the order of a Court requiring him to do or forbear an act connected with or in the course of his profession. Third—For misconduct in office, or for good cause shown.

Conviction. 898. SEC. 15. In case of the conviction of an attorney or counselor of a felony or misdemeanor involving moral turpitude, the Clerk of the Court in which the conviction was had shall, within thirty days thereafter, transmit to the Supreme Court a certified copy of the record of conviction.

Proceedings to remove. 899. SEC. 16. The proceedings to remove or suspend an attorney and counselor, under the first subdivision of section fourteenth, shall be taken by the Court on the receipt of the certified copy of the record of convictions; the proceedings under the second and third subdivisions of section fourteenth may be taken by the Court for matters within its knowledge, or may be taken upon the information of another.

Accusation 900. SEC. 17. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the Court.

Same. 901. SEC. 18. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

Accused to appear and answer. 901†. SEC. 19. After receiving the accusation, the Court shall, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation, at a specified time, in the same or subsequent term, and shall cause a copy of the order, and of the accusation, to be served upon the accused within a prescribed time before the day appointed in the order.

902. SEC. 20. The accused must appear at the time appointed in the order and answer the accusation, unless for sufficient cause the Court assign another day for that purpose; if he do not appear, the Court may proceed and determine the accusation in his absence. Pleadings.

903. SEC. 21. The accused may answer the accusation, either by objecting to the sufficiency, or by denying its truth. Same.

904. SEC. 22. If he object to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes. Demurrer.

905. SEC. 23. If an objection to the sufficiency of the accusation be not sustained, the accused shall answer forthwith. Answer.

906. SEC. 24. If the accused plead guilty, or refuse to answer the accusation, the Court shall proceed to judgment of removal or suspension. If he deny the matter charged, the Court shall immediately, or at such time as it may appoint, proceed to try the accusation. Plea of guilty, etc.

907. SEC. 25. The Court may, in its discretion, order a reference to a committee to take the depositions in the matter, and to report to the Court before proceeding to try the accusation. Reference to committee.

908. SEC. 26. Upon conviction, in cases arising under the first subdivision of section fourteenth, the judgment of the Court shall be, that the name of the party be stricken from the roll of attorneys and counselors of the Court, and he be precluded from practicing as such attorney or counselor in all the Courts of this Territory; and, upon conviction in cases under the second and third subdivisions of section fourteenth, the judgment of the Court may be, according to the gravity of the offense charged, deprivation of the right of practice as attorneys or counselors in the Courts of this Territory, permanently or for a limited period. Judgment on conviction.

909. SEC. 27. Nothing in this Act shall be so construed as to prevent any person from appearing in his own behalf in any Court in this Territory. Party may appear in his own behalf in any Court without license.

An attorney who, at the request and for the benefit of a debtor, appears of record for the creditor in a confession of judgment by the debtor, may recover what his services are reasonably worth from the debtor.—Mitchell et al. vs. Bromberger, 1 Nev., p. 604.

An attorney or counselor cannot, without the consent of his client, be compelled, and has no right, to disclose any fact which may have been communicated to him by his client, solely for the purpose of obtaining his professional services; but this rule is not to be carried to the extent of depriving the attorney of the means of obtaining or defending his own rights. Mitchell vs. Bromberger, 2 Nev., p. 345.

Whenever, in a suit between the attorney and client, the disclosure of a privileged communication becomes necessary to the protection of the attorney's own rights, he is released from those obligations of secrecy which the law places upon him. He should not, however, disclose more than is necessary for his own protection.—Id.

An attorney who is authorized by a City Council to bring a suit for the benefit of the city, has authority to direct the Sheriff to serve the summons in such case, and may bind the city to pay for such service.—Feusier & Co. v. The Mayor and Council of Virginia City, 3 Nev., p. 58.

CONTINGENT COUNSEL FEES, WHEN SUIT COMPROMISED.—An instruction in a suit on a *quantum meruit* to recover counsel fees that "if plaintiffs' fee was to be contingent on success, and defendant settled the suit without plaintiffs' consent, plaintiffs could recover what their services were worth," does not incorrectly state the law.—Quint & Hardy v. Ophir S. M. Company, 4 Nev., p. 304.

COUNSEL FEES, TRAVELING EXPENSES, AND TIME LOST.—An instruction to the jury in a suit to recover counsel fees that "if plaintiffs were employed by defendant to come from San Francisco to Virginia City, or from San Francisco to Aurora, and there was no special agreement as to the amount to be paid, they can only recover the value of the services rendered at the place where they were rendered, with the addition of reasonable traveling expenses; and if the traveling expenses were paid by defendant, then they cannot be recovered by plaintiffs." *Held*, clearly erroneous, and properly refused.—Id.

COUNSEL FEES—WHAT TO BE TAKEN INTO ACCOUNT.—To ascertain what may be reasonable compensation for services rendered by an attorney, the amount involved, and the character of the business transacted by him, must be taken into account, and the time employed; not the time immediately devoted to the business alone, but the time which he must lose from other business in attending to it.—Id.

CHAPTER XL.

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An Act concerning the Courts of justice of this State, and judicial officers.

[Approved January 26, 1865, p. 110.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Courts of Justice of the State.

910. SECTION 1. The following shall be the Courts of justice for this State: First, the Supreme Court; second, the District Courts; third, Justices' Courts; and, fourth, such Municipal Courts as may from time to time be established by the Legislature in incorporated cities or towns.

Justices of the Supreme Court.

911. SEC. 2. The Supreme Court shall consist of a Chief Justice and two Associates. Each Justice hereafter elected or appointed shall be commissioned by the Governor, and before entering upon the discharge of his duties, shall take the constitutional oath of office.

When to be elected.

912. SEC. 3. The Justices of the Supreme Court shall be chosen at general elections, by the qualified voters of the State; one of the Justices shall be chosen at the general election of the year one thousand eight hundred and sixty-six (1866), and at the general election every second year thereafter, and shall hold his office for the term of six years from the first day of January next after his election. The senior Justice in commission shall be the Chief Justice, and in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot who shall be Chief Justice.

Chief Justice.

Governor to fill vacancies.

913. SEC. 4. When, from any cause, a vacancy shall occur in the office of a Justice of the Supreme Court, the Governor shall fill the same by granting a commission, which shall continue until the election and qualification of a Justice to fill such vacancy. A Justice to fill a vacancy shall be chosen at the first general election subsequent to the occurrence of the vacancy.

Appellate jurisdiction

914. SEC. 5. The Supreme Court shall have appellate jurisdiction in all cases in equity, and also in all cases at law in which is involved the title or right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, im-

post, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, exceeds three hundred (300) dollars; also, in all other civil cases not included in the general subdivisions of law and equity, and also on questions of law alone, in all criminal cases in which the offense charged amounts to a felony. ([a])

(a) See Const., Art. VI, Sec. 4.

915. SEC. 6. The Supreme Court shall have jurisdiction to review upon appeal: First, a judgment in an action or proceeding commenced in a District Court, when the matter in dispute is embraced in the general jurisdiction of the Supreme Court, and to review upon appeal from such judgment any intermediate order or decision involving the merits and necessarily affecting the judgment; second, an order granting or refusing a new trial in such cases; an order granting or refusing to change the place of trial of an action or proceeding after motion is made therefor in the cases in which that Court has appellate jurisdiction, and from an order granting or refusing to grant an injunction or mandamus in the case provided for by law. ([1]) Jurisdiction to review.

(1) JURISDICTION OF SUPREME COURT TO REVIEW EVIDENCE IN CRIMINAL CASES.—Is it within the jurisdiction of the Supreme Court (Const., Art. VI, Sec. 4,) to review the evidence in a criminal case and decide that it does not sustain the verdict?—State v. Van Winkle, 6 Nev., p. 340.

916. SEC. 7. This Court, and each of the Justices thereof, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and, also, all writs and process necessary to the complete exercise of its appellate jurisdiction; such writs may be issued to any part of the State, and in granting writs of habeas corpus, such Court, or a Judge thereof, may issue the writ upon application by or on behalf of any person held in actual custody in any part of the State, and may make such writs returnable before the Court, or either of the Justices thereof, or before any District Court of the State, or any Judge of said Courts. ([a]) Court or Justice to issue certain writs.

(a) The Justices of the Supreme Court cannot issue writs of mandamus, certiorari, prohibition, or quo warranto under the Constitution (Art. VI, Sec. 4), but they must be issued by the Court. So held in the case of The State of Nevada ex rel. Thompson v. The Board of Commissioners of Washoe County, decided at April Term, 1871.

917. SEC. 8. This Court may reverse, affirm, or modify the judgment or order appealed from as to any or all of the parties, and may, if necessary, order a new trial, or the place of trial to be changed. When the judgment or order appealed from is reversed or modified, this Court may make, or direct the inferior Court to make, complete restitution of all property and rights lost by the erroneous judgment or order. ([b]) Power of Court on appeal.

(b) See Sec. 1400, post.

Terms of Court.

918. SEC. 9. There shall be four terms of this Court in each year, to commence on the first Mondays of January, April, July, and October. Such terms shall continue until the business before the Court is determined, or for such length of time as, in the opinion of the Court, the public interest may require.

Two Justices may pronounce judgment.

919. SEC. 10. Two Justices shall constitute a quorum for the transaction of business, excepting such business as may be done at chambers, and the concurrence of two Justices who heard the argument shall be necessary to pronounce any judgment, except in chamber business; and if two Justices who have heard the argument do not agree, the case shall be reargued.

Where Court shall be held.

920. SEC. 11. The Supreme Court shall hold its sessions at the Capital of the State. If a room in which to hold the Court, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, be not provided by the State, the Court may direct the Sheriff of the county in which it is held to provide such room, attendants, fuel, lights, and stationery, and the expense thereof shall be paid out of the State Treasury.

Opinions to be in writing.

921. SEC. 12. All opinions and decisions rendered by the Supreme Court shall be in writing, signed by the Justices concurring therein, and shall be spread at large on the records of the Court kept for that purpose.

THE DISTRICT COURTS.

SEC. 13. (a)

(a) Section thirteen divided the State into judicial districts, and is superseded by section nine hundred and seventy-one, post.

When District Judges to be elected.

922. SEC. 14. There shall be a District Judge for each judicial district, who shall be chosen by the qualified electors of their respective districts at the general elections, and shall enter upon the discharge of their duties on the first day of January subsequent to such election, and shall hold office for the term of four years, excepting those elected at the last election, who shall hold their office for the term provided for in the State Constitution; *provided*, that in the First Judicial District there shall be three Judges, each of whom shall be chosen in the same manner as the Judges of other districts, and who shall have concurrent and coextensive jurisdiction. (b) The Courts held by District Judges shall be the District Courts of the State. Each District Judge shall, before entering upon the discharge of the duties of his office, take the constitutional oath of office.

Term of office.

Jurisdiction.

(b) The three-Judge system abolished by Act of March 9th, 1866, p. 251.

Residence and eligibility of District Judges.

923. *SEC. 15. Each District Judge shall reside in his district, and no person shall be eligible to the office of District Judge who has not been a resident of the State twelve months, and of the district or county thirty days next preceding his election or appointment. [As amended February 27, Stats. 1866, p. 138.]

924. SEC. 16. [Refers to business of the three Judges of Storey County.] First Judicial District.

925. SEC. 17. The District Courts shall, severally, have original jurisdiction in all cases in equity; also, in all cases at law which involve the title, or the right of possession to, or the possession of, real property or mining claims, or the legality of any tax, (c) impost, assessment, toll, or municipal fine; also, in all actions to foreclose mechanics' liens; and in all cases in which the demand, exclusive of interest, or the value of the property in controversy, exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and the person and estates of minors, idiots, and insane persons, and of the action of forcible entry and unlawful detainer; and, also, in all criminal cases not otherwise provided for by law; they shall also have final appellate jurisdiction in cases arising in Justices' Courts, and such other inferior tribunals as may be established by law. The District Courts, and the Judges thereof, shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction; and also shall have power to issue writs of habeas corpus, on petition by, or on behalf of, any person held in actual custody in their respective districts. [As amended February 5, Stats. 1866, p. 59.] Original jurisdiction Appellate jurisdiction Power to issue writs

(c) Constitution, Art. VI, Sec. 6.

JURISDICTION OF FEDERAL JUDICIARY.—The decisions of the United States Supreme Court, upon questions of the jurisdiction of the Federal judiciary, are final and controlling.—Feusier v. Lammon, 6 Nev., p. 209.

JURISDICTION OF STATE COURTS AS TO GOODS SEIZED UNDER UNITED STATES PROCESS.—Where goods are seized and held by a Marshal, under valid process from a United States Court, such process is a complete defense, and gives him the right to hold the property against any writ issued from a State Court.—Id.

JURISDICTION OF COURTS TO RENDER JUDGMENT.—The jurisdiction of a Court to render judgment in a cause is coextensive with its authority to inquire into the facts.—Id.

JURISDICTION OF DISTRICT COURTS—COSTS.—A suit for the recovery of money may be brought in a District Court by simply claiming three hundred dollars or upwards, although less may be actually due; but if less than three hundred dollars is recovered, the plaintiff is not entitled to costs.—Klein v. Allenbach, 6 Nev., p. 159.

TEST OF JURISDICTION.—The test of the jurisdiction of the District Courts in cases of money demands is the amount claimed in the complaint—the demand in controversy being the sum sought to be recovered by plaintiff, and not that for which he actually recovers judgment.—Id.

JURISDICTION OF SUPREME COURT.—The language of the Constitution conferring jurisdiction upon the Supreme Court in cases of money demands (Art. VI, Sec. 4), is identical with that respecting the District Courts (Art. VI, Sec. 6), and whenever the District Court has jurisdiction in the first instance, the Supreme Court has jurisdiction to review its action on appeal.—Id.

Terms of Court, where held

926. SEC. 18. The terms of the District Court shall be held at the county seat of the several counties. If a room for holding the Court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the Court may direct the Sheriff to provide such room, attendants, fuel, lights, and stationery, and the expenses thereof shall be a county charge.

Duration of terms.

927. SEC. 19. The terms of holding these Courts shall be as provided by law in each district, and each term shall continue so long as the business may require, or until the day fixed for the commencement of another term in the same district, and may be adjourned from time to time, in the discretion of the Court.

Business at chambers.

928. SEC. 20. The District Judges shall, at all reasonable times, when not engaged in holding Courts, transact such business at chambers as may be done out of Court. At chambers they may try and determine writs of mandamus, certiorari, quo warranto, hear and dispose of motions for new trials, and all applications for writs which are usually granted, in the first instance, upon ex parte application, and may also, in their discretion, hear and determine applications to discharge such orders and writs. They may also hear and determine applications for writs of assistance at chambers.

When District Judge may hold Court in any district.

929. SEC. 21. A District Judge may hold a term in any judicial district in this State, upon the request of the Judge of the district in which such term is to be held; and when, by reason of sickness or absence from the State, or from any other cause, a term cannot be held in a district by the Judge thereof, a certificate of that fact shall be transmitted by the Clerk to the Governor, who shall thereupon direct some other District Judge to hold such term. It shall be the duty of the Judge thus directed to hold such term; *provided*, it will not conflict with his duties in his own district.

Rules of District Court.

930. SEC. 22. Each District Court shall have power to make rules not inconsistent with the Constitution and laws of this State, for its own government and the government of its officers; but such rules shall not be in force until thirty days after their adoption and publication, except for the first terms held under the Constitution of the State; and no rule shall be made imposing any tax or charge upon any legal proceeding, except as a penalty upon overruling a demurrer, or making an allowance to any officer for services. (a)

(a) The Supreme Court may make rules for the government of District Courts.—Sec. 1651, post.

ENFORCEMENT OF RULES OF COURT.—Courts have power to adopt rules not in conflict with law; and when they have done so, and the rules are reasonable, an appellate Court will not interfere with their enforcement.—Caples v. Central Pacific R. R. Co., 6 Nev., p. 265.

NOTICE OF MOTION TO RETAX COSTS.—Where a rule of Court required notice of motion to retax costs to be served within two days after the filing of the cost bill: *Held*, that it was no error to refuse to hear a motion to retax costs, when such notice had not been served.—Id.

DISCRETION OF COURTS AS TO THEIR RULES.—Courts have a reasonable discretion in allowing or not allowing the requirements of their rules to be waived.—Id.

Judge not to charge juries upon matters of fact.

931. SEC. 23. District Judges shall not charge juries upon matters of fact, but may state the evidence and declare the law. In stating the evidence, the Judge should not comment upon the probability or improbability of its truth, nor the credibility thereof. If the Judge state the evidence, he must also inform the jury that they are not to be governed by his statement upon matters of fact.

May be required to reduce decision to writing.

932. SEC. 24. A District Judge may be required, in deciding any question of law, to reduce his decision to writing at the time such decision is made, and note any exception thereto, which may be taken by either party, to a trial or proceeding before him.

Jurisdiction of public offenses.

933. SEC. 25. The District Courts shall have jurisdiction to inquire, by the intervention of a grand jury, of all public offenses, committed or triable in their respective districts, to try and determine all indictments found therein, and to hear and determine appeals from Justices' or other inferior Courts in all cases of a criminal nature.

Powers of Court.

934. SEC. 26. The District Courts shall have power to open and receive the proofs of last wills and testaments, and to admit them to probate; to grant letters testamentary, of administration and guardianship, and to revoke the same for cause shown, according to law; to compel executors, administrators, and guardians to render an account when required, or at the period fixed by law; to order the sale of property of estates, or belonging to minors; to order the payment of debts due by estates; to order and regulate all partitions of property or estates of deceased persons; to compel the attendance of witnesses; to appoint appraisers or arbitrators; to compel the production of title papers or other property of an estate or of a minor, and to make such other orders as may be necessary and proper in the exercise of the jurisdiction conferred upon them by law.

Powers of Court in vacation.

935. SEC. 27. The District Judge shall have power, in vacation, to appoint appraisers, to receive inventories and accounts to be filed in his Court; to suspend the powers of executors, administrators, or guardians, in cases allowed by law; to grant special letters of administration or guardianship, to approve claims and bonds, and to direct the issuance from his Court of all writs and process necessary to the exercise of his powers over the estates of deceased persons, and over the property and persons of minors, idiots, and insane persons.

THE JUSTICES' COURTS.

Secs. 28, 29, and 30, repealed by Sec. 119, Stats. 1866, p. 125, and the Act of 1866 was repealed by Civil Practice Act, 1869, Sec. 1667. For the subject matter of the sections repealed see Sec. 1570 et seq.

*Further jurisdiction

936. SEC. 31. Justices' Courts shall also have jurisdiction of the following public offenses, committed within the respective counties in which such Courts are established: First, petit larceny; second, assault and battery, not charged to have been committed upon a public officer in the discharge of his duties, or with intent to kill; third, breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

Terms of office and election.

937. SEC. 32. Justices of the Peace shall hold their offices for two years, and until their successors are elected and qualified. They shall be chosen by the electors of their respective townships or cities, at the general election in the year one thousand eight hundred and sixty-five (1865), and the general election every two years thereafter, and shall enter upon their duties on the first Monday of January succeeding their election. Whenever a vacancy shall occur in the office of a Justice by death, resignation, or otherwise, such vacancy shall be filled by appointment of the Board of County Commissioners of the proper county. The Justice appointed to supply a vacancy shall hold his office for the unexpired term of his immediate predecessor. Each Justice, before entering upon the discharge of his duties, shall take the constitutional oath of office, and shall execute a bond to the State in the sum of five thousand (5,000) dollars, conditioned for the faithful performance of his duties, and file the same with the County Clerk. ([a])

(a) Official bonds, see Sec. 2917, post, et seq; also Sec. 2978, for amount of bond of Justice.

Election and term of office of Justice of the Peace, see Secs. 2599, 2616, post.

Recorders' Courts.

938. SEC. 33. Recorders' Courts, which are already established, or which may hereafter be established in any incorporated city of this State, shall have jurisdiction: First—Of an action or proceeding for the violation of any ordinance of their respective cities. Second—Of an action or proceeding to prevent or abate a nuisance within the limits of their respective cities. Third—Of proceedings respecting vagrants and disorderly persons.

Jurisdiction.

Further jurisdiction

939. SEC. 34. The Recorders' Courts already established, or which may hereafter be established, shall also have jurisdiction of the following public offenses, committed in their respective cities: First, petit larceny; second, assault and battery, not charged to have been committed upon a public officer in the execution of his duties, or with intent to kill; third, breaches of peace, riots, affrays, commiting a willful injury to property,

and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

Court, when and where to be held. 940. SEC. 35. A Recorder's Court shall be held by a Judge who shall be designated as the "Recorder of the City," and said Court shall be held at such place in the city within which it is established as the government of such city may by ordinance direct.

Election of Recorder. 941. SEC. 36. The Recorders shall be chosen by the electors of their respective cities, on a day to be fixed by the government of such cities, and shall hold their offices for one year, unless a longer period be fixed in the Acts incorporating such cities; in which case, for such period fixed. Before entering upon their duties, they shall take the constitutional oath of office.

Compensation. 942. SEC. 37. The Recorders shall receive compensation, to be fixed by the charter, or when not so fixed, by the government of their respective cities, to be paid by such cities quarterly, in equal proportions. Such compensations shall not be increased or diminished during the period for which they are elected.

Powers and duties. 943. SEC. 38. The Recorders shall possess the powers and exercise the duties of committing magistrates, in the criminal causes in which the Courts held by them have no jurisdiction by this Act; and as such magistrates, they may examine, commit, or discharge, all persons brought before them, as the justice and law of the case may require. (1)

(1) POWERS OF COMMITTING MAGISTRATES JUDICIAL.—The power sought to be conferred upon City and Town Recorders, by section thirty-eight of the Act concerning Courts of justice (Stats. 1864-5, p. 116), to "exercise the duties of committing magistrates," etc., is completely judicial in its character.—Meagher v. Storey County, 5 Nev., p. 244.

CITY RECORDERS CANNOT BE MADE COMMITTING MAGISTRATES.—Section thirty-eight of the Act concerning Courts of justice (Stats. 1864-5, p. 116), in so far as it authorizes City and Town Recorders "to possess the powers and exercise the duties of committing magistrates," etc., is unconstitutional and void.—Id.

May issue process. 944. SEC. 39. Recorders and Recorders' Courts may issue all legal process, writs, and warrants, necessary and proper to the complete exercise of their powers.

Court always to be open. 945. SEC. 40. There shall be no terms in Recorders' Courts. These Courts shall always be open.

General provisions respecting the Courts of justice and judicial officers.

ARTICLE I.

Court of record. 946. SEC. 41. The Supreme Court, the several District Courts, and such other Courts as the Legislature shall designate, shall be Courts of record.

Proceedings to be public.

947. SEC. 42. The sittings of every Court of justice shall be public, except as provided in the next section.

Exceptions

948. SEC. 43. In an action for divorce the Court may direct the trial of any issue of fact joined therein to be private, and upon such directions all persons may be excluded, except the officers of the Court, the parties, their witnesses, and counsel.

Powers of Court.

949. SEC. 44. Every Court shall have power to preserve and enforce order in its immediate presence; to enforce order in the proceedings before it, or before a person or persons impowered to conduct a judicial investigation under its authority; to compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its Judge out of Court in an action or proceeding pending therein; to control, in furtherance of justice, the conduct of its ministerial officers.

ARTICLE II.

When Judge disqualified

950. SEC. 45. A Judge shall not act as such in an action or proceeding to which he is a party, or in which he is interested. Second, when he is related to either party by consanguinity or affinity within the third degree. Third, when he has been attorney or counsel for either party in the action or proceeding, but this section shall not apply to the arrangement of the calendar, or the regulation of the order of business.

Not to act as attorney except when party

951. SEC. 46. A Judge of the Supreme Court, or of the District Courts, shall not act as attorney or counsel in any Court, except in an action or proceeding to which he is a party on the record.

Partner not to act.

952. SEC. 47. A Judge or Justice of the Peace shall not have a partner acting as attorney or counsel in any Court in this State.

Absence from State, to forfeit office.

953. SEC. 48. A Judge of the Supreme Court, or of the District Court, shall not absent himself from this State for more than ninety consecutive days. A violation of the provisions of this section shall work a forfeiture of such office. [As amended March 3, Stats. 1865, p. 185.]

ARTICLE III.

Courts, when to be held.

954. SEC. 49. The Courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

When Courts shall not be open.

955. SEC. 50. No Court shall be open, nor shall any judicial business be transacted on Sunday, on New Year's Day, on the Fourth of July, on Christmas Day, on Thanksgiving Day, on Washington's Birthday, or on any day on which the general election is held, except for the following purposes: First—To give, upon their request, instructions to a jury, then deliberating on their verdict. Second—To receive a verdict or discharge a jury. Third—For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature. Fourth—For the issue of a writ of attachment, which writ may be issued on each and all of the days above enumerated, upon the plaintiff, or some person in his behalf, setting forth in the affidavit required by law for obtaining said writ, the additional

Exceptions

averments, as follows: That the affiant has good reason to believe, and does believe, that it will be too late for the purpose of acquiring a lien by said writ to wait till a subsequent day for the issuance of the same. And all proceedings instituted, and writs issued, and official acts done, on any of the days above specified, under and by virtue of this section, shall have all the validity, force, and effect of proceedings commenced on other days, whether a lien be obtained or a levy made, under and by virtue of said writ. [As amended January 31, Stats. 1866, p. 53.] **Averments** **Proceedings valid.**

956. SEC. 51. Every Court of justice, except Justice's or Recorder's Court, shall sit at the county seat of the county in which it is held; Justices' Courts shall be held in their respective townships, precincts, or cities, and Recorders' Courts in their respective cities. **Terms, where to be held.**

957. SEC. 52. If no Judge attend on the day appointed to hold the Court before noon, the Sheriff or Clerk shall adjourn the Court until the next day, at ten o'clock, and if no Judge attend on that day before noon, the Sheriff or Clerk shall adjourn the Court until the following day, and so on from day to day for one week; if no Judge attend for one week, the Sheriff or Clerk shall adjourn the Court for the term; *provided*, before the expiration of one week, the Judge shall order by letter or telegram to adjourn the Court to any day within the term, the Sheriff or Clerk shall adjourn the Court to the day so ordered. [As amended March 5, Stats. 1869, p. 136.] **Court, how adjourned in absence of Judge.**

958. SEC. 53. A Judge authorized to hold or preside at a Court appointed to be held in a city, precinct, or town, may, by an order filed with the County Clerk, and published as he may prescribe, direct that the Court be held or continued at any other place in the city or county than that appointed, when war, pestilence, or other public calamity, or the dangers thereof, or the destruction of the building appointed for holding the Court, may render it necessary; and may, in the same manner, revoke the order, and, in his discretion, appoint another place in the same city or county for holding the Court. **Place of holding Court may be changed in certain cases.**

959. SEC. 54. When the Court is held at a place appointed as provided in the last section, every person held to appear at the Court shall appear at the place so appointed. **Parties to appear.**

ARTICLE IV.

960. SEC. 55. Each of the following Courts, and no other, shall have a seal: First, the Supreme Court; second, the District Courts. **Seals of Courts.**

961. SEC. 56. The several District Courts for which separate seals have not been heretofore provided, shall direct the respective Clerks of such Courts to procure such seals, and shall have the following inscriptions surrounding the same: For the District Courts, "District Court, —— District, County of ——," inserting the number of the district and the name of the county. **Seals of District Courts to be procured.**

962. SEC. 57. Until the seals, devised as provided in the last section, are procured, the Clerk of each Court may use his private seal whenever a seal is required. **Private seal may be used.**

Clerk to keep seal. 963. SEC. 58. The Clerk of each Court shall keep the seal thereof.

Seal to be affixed to certain documents. 964. SEC. 59. The seal of the Court need not be affixed to any proceedings therein, except: First, to a summons, writ, or commission to take testimony; second, to the proof of a will, or the appointment of an executor, administrator, or guardian; third, to the authentication of a copy of a record or other proceeding of the Court, or an officer thereof; fourth, to certificates of acknowledgment, and all final process.

How impressed. 965. SEC. 60. The seal may be affixed by impressing it on the paper, or on a substance attached to the paper and capable of receiving the impression.

ARTICLE V.

Order of cases pending. 966. SEC. 61. If an application for an order made to a Judge of a Court in which the action or proceeding is pending be refused, in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other Judge, except of a higher Court; *provided*, that nothing in this section be so construed as to apply to motions refused for any informality in the papers or proceedings necessary to obtain an order.

Violation of last section, how punished. 967. SEC. 62. A violation of the last section may be punished as a contempt; and an order made contrary thereto may be revoked by the Judge who made it, or vacated by a Judge of a Court in which the action or proceeding is pending.

Powers of Judges and Clerks of Courts of record. 968. SEC. 63. The Judges and Clerks of the Supreme Court, and of the District Courts, shall have power in any part of the State; and Justices of the Peace and Recorders, within their respective cities, precincts, or townships, shall have power to take and certify: First, the acknowledgment of conveyances and the satisfaction of a judgment of any Court; second, an affidavit to be used in any Court of justice of this State. (a)

Vacancy not to affect cases pending. 969. SEC. 64. No action or proceeding in a Court of justice shall be affected by a vacancy in the office of all or any of the Judges, or by the failure of a term thereof.

Proceedings to be in English. 970. SEC. 65. Every written proceeding in a Court of justice in this State, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

(a) Acknowledgments by Justices of the Peace, Sec. 231.

CHAPTER XLI.

OF REDISTRICTING THE STATE.

SECTION 971. Judicial Districts; election of Judges.
972. Terms of Court.

SECTION 973. Salaries of District Judges.
974. Act to take effect, when.

An Act to redistrict the State of Nevada.

[Approved March 7, 1873, p. 145.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

971. SECTION 1. From and after the first Monday in January, A. D. one thousand eight hundred and seventy-five, the State shall be divided into judicial districts, as follows: The County of Storey shall constitute the First Judicial District; the Counties of Washoe, Ormsby, and Douglas the Second Judicial District; the County of Lyon the Third Judicial District; the County of Humboldt the Fourth Judicial District; the Counties of Lander, Nye, and Churchill the Fifth Judicial District; the Counties of White Pine and Eureka the Sixth Judicial District; the County of Lincoln the Seventh Judicial District; the County of Esmeralda the Eighth Judicial District, and the County of Elko the Ninth Judicial District. For each of which districts a District Judge shall be elected by the qualified electors thereof, at the general election in the year A. D. one thousand eight hundred and seventy-four. **Judicial Districts.** **Election of Judges.**

972. SEC. 2. The terms of Court shall commence in said districts as follows: In the First District—On the first Monday in January, March, June, and October. In the Second District—In the County of Washoe, on the first Monday of January, June, and October; in the County of Ormsby, on the first Monday of March, August, and November; in the County of Douglas, on the first Monday in May and December. In the Third District—On the first Monday in February, May, August, and November. In the Fourth District—On the first Monday in January, April, July, and October. In the Fifth District—In the County of Lander, on the first Monday in January, June, and October; in the County of Nye, on the first Monday in March, August, and November; in the County of Churchill, on the first Monday in May and December. In the Sixth District—In the County of White Pine, on the first Monday in January, May, and September; in the County of Eureka, on the first Monday in March, July, and November. In the Seventh District—On the first Monday in January, April, July, and October. In the Eighth District—On the third Monday in February, May, August, and November. In the Ninth District—On the first Monday in January, April, July, and October. **Terms of Court.**

973. SEC. 3. The annual salaries of the Judges of the several districts shall be as follows: Of the First District, seven thousand dollars; of the Second District, five thousand dollars—of which sum the County of Washoe shall pay twenty-one hundred dollars, the County of Ormsby shall pay twenty-one hundred dollars, and the County of Douglas shall pay eight hundred dollars; of the Third District, three thousand six hundred dollars; of the Fourth District, four thousand dollars; of the Fifth District, five thousand five hundred dollars—of which sum the **Salaries of District Judges.**

County of Lander shall pay twenty-four hundred dollars, the County of Nye shall pay twenty-one hundred dollars, and the County of Churchill shall pay ten hundred dollars; of the Sixth District, seven thousand dollars—of which the County of White Pine shall pay three thousand five hundred dollars, and the County of Eureka shall pay three thousand five hundred dollars; of the Seventh District, five thousand dollars; of the Eighth District, twenty-four hundred dollars; of the Ninth District, four thousand dollars.

Act to take effect, when.

974. SEC. 4. This Act shall take effect on the first Monday of January, A. D. eighteen hundred and seventy-five.

For present judicial districts, terms of Court, and salaries of Judges, see Stats. 1869, pp. 87 and 133; also, Stats. 1871, p. 80. Also, see Stats. 1873, p. 119, for salary of Judge of Seventh District; also, see Stats. 1873, pp. 102 and 170. All of which we have omitted, because the Act of 1873, p. 145, above inserted, will supersede them on the first Monday of January, eighteen hundred and seventy-five.

CHAPTER XLII.

OF THE PAYMENT OF THE SALARIES OF JUDGES OF THE SUPREME COURT.

SECTION 975. Appropriation.
976. Treasurer required to set apart first money each quarter—Judicial Salary Fund.
977. Controller required to issue warrants, etc.; proviso.
978. Obsolete.

An Act to provide for the payment of the salaries of the Judges of the Supreme Court of the State of Nevada. [Stats. 1866, p. 74.] (a)

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Appropriation.

975. SECTION 1. There is hereby set apart and appropriated quarterly, from the first money coming into the treasury during such quarter, from taxes or otherwise not specially appropriated to the payment of the principal or interest of Territorial or State bonds, an amount sufficient, when added to the Docket Tax Fund, to equal the sum of five thousand two hundred and fifty ($5,250) dollars, to pay the salaries of the Judges of the Supreme Court for such quarter. [As amended February 27, Stats. 1866, p. 135.]

976. SEC. 2. The Treasurer is hereby authorized and required to set apart such first money, each quarter coming into the treasury from the revenue of such quarter, and not otherwise appropriated, the said sum, amounting, with the Docket Tax Fund, to five thousand two hundred and fifty dollars, which sum, when so set apart, shall be termed the Judicial Salary Fund, and shall only be drawn from the treasury in payment of salaries of the Judges of the Supreme Court of the State of Nevada. **Treasurer required to set apart first money each quarter—Judicial Salary Fund.**

977. SEC. 3. The Controller of State shall, on the first Monday of January, April, July, and October of each year, issue his warrant to each of the Supreme Judges, for the previous quarter's salary, the sum of seventeen hundred and fifty dollars, payable out of the money so set apart, less the amount he may have received from the Clerk of his Court, out of the docket tax during the preceding quarter; *provided,* the Controller shall not in any case issue to any Judge his warrant for such quarter's salary until such Judge shall have produced and furnished to him a certificate of the Clerk of his Court as to the amount he may have received from docket tax during the preceding quarter; *provided further,* that if any Judge shall from any cause have only served a portion of the preceding quarter, the Controller shall issue his warrant only for the proportional part of a quarter for which said Judge may have served. **Controller required to issue warrants, etc.** **Proviso.**

978. SEC. 4. [Obsolete.] **Obsolete.**

(a) This Act passed February twenty-first, eighteen hundred and sixty-six, notwithstanding the objections of the Governor.

CHAPTER XLIII.

OF THE PAYMENT OF THE SALARIES OF DISTRICT JUDGES.

SECTION 979. Treasurer required to set apart money quarterly to pay compensation; Salary Fund; Auditor required to draw warrants; Treasurer to pay warrants.
980. Surplus to be transferred to General Fund; proviso.

An Act to provide a fund for the payment of the salaries of the District Judges of this State, and to regulate the disposition of the same.

[Approved March 1, 1866, p. 160.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Treasurer required to set apart money quarterly to pay compensation.

979. SECTION 1. It shall be the duty of the County Treaserer of the county or counties composing the respective districts,

and they are hereby directed and required, from the revenues of the several counties respectively, to set apart quarterly a sufficient amount of money to pay the quarterly compensation, or such county's proportion of the quarterly compensation of the several District Judges of this State, of and within the several districts respectively as apportioned by law. And the moneys so set apart as aforesaid, shall be and remain a special and exclusive Fund, to be known in each county as the "District Judges' Salary Fund;" and it shall be the duty of the several County Auditors, and they are hereby directed and required, to draw their warrants upon such special Fund, upon the County Treasurers of the several counties, upon the first Monday of each month of each year, in favor of each District Judge of the said district, for the monthly compensation of said Judges as fixed by law; and it shall be the duty of the County Treasurer of each county, and he is hereby directed and required, to pay such warrants immediately upon the presentation thereof to him, from the moneys so set apart in said Fund; and the moneys so set apart shall not be used or appropriated to any other Fund, use, or purpose. [As amended March 1, Stats. 1869, p. 98.]

Salary Fund.

Auditor required to draw warrants.

Treasurer to pay warrants.

Surplus to be transferred to General Fund.

980. SEC. 2. Whenever there shall be in any of the treasuries of any of the counties, from any cause, a surplus of money in the special Fund by this Act created, over and above a sufficient fund to pay the warrants named, as in this Act provided, it shall be the duty of the County Treasurer of such county to transfer such surplus money to the General Fund, and use or disburse the same as required by the laws relating thereto; *provided*, that no portion of said surplus moneys shall go into the Redemption Fund of any county, created for the purpose of paying the outstanding indebtedness of any county.

Proviso.

CHAPTER XLIV.

OF SIGNING RECORDS AND SETTLING STATEMENTS.

SECTION 981. Judges authorized to sign records after expiration of term of office.
982. To have same legal effect.
983. Records, etc., signed since January first, eighteen hundred and sixty-seven, legalized.
984. Power not to be taken from successor.

An Act to authorize District Judges in certain cases to sign records and settle statements.

[Approved February 19, 1867, p. 59.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

981. SECTION 1. It shall be lawful, from and after the passage of this Act, for any District Judge of this State, at any time within twelve months after the expiration of his term of office, or within twelve months after he shall, from any cause, have ceased to exercise the duties of such office, to sign any records of his Court that he may have left unsigned at the time of going out of office; also to sign and settle statements on motions for new trials, and statements and bills of exception on appeal to the Supreme Court, subject to the same regulations and restrictions that now are or hereafter may be prescribed by law. **Judges authorized to sign records after expiration of term of office.**

982. SEC. 2. Said records, when thus signed, and said statements, and such bills of exceptions, when thus settled, shall have the same legal force and effect that they would be entitled to had they been signed or settled by the Judge while in the exercise of his office. **To have same legal effect.**

983. SEC. 3. Any and all such records signed, and statements or bills of exceptions so signed and settled by any District Judge as aforesaid, since the first day of January, one thousand eight hundred and sixty-seven, are hereby legalized and made as valid to all intents and purposes, as though done since the passage of this Act. **Records, etc., signed since January 1st, 1867, legalized.**

984. SEC. 4. This Act shall not be deemed to take from the successors of any District Judge the power to sign any record, or to sign and settle any statement or bill of exceptions, as heretofore authorized by law. **Power not to be taken from successor.**

CHAPTER XLV.

OF THE PUBLICATION OF THE DECISIONS OF THE SUPREME COURT.

SECTION 985. Decisions, how published; volume, what to contain.
986. Clerk to prepare for publication and index.
987. Clerk appointed Commissioner.
988. Duty of Commissioner; Judges to accept.
989. Proof sheets to be submitted to Judges.

SECTION 990. State to be owner of edition.
991. Title of volume.
992. Duty of Secretary of State in distribution of Reports; officer to turn over Reports to successor.

ACT OF EIGHTEEN HUNDRED AND SEVENTY-THREE.

993. Number of Reports to be retained; surplus to be sold; proceeds to go into Library Fund.
994. Commissioner to file report of disbursements.

An Act to provide for the publication of the Decisions of the Supreme Court of the State of Nevada.

[Approved March 13, 1867, p. 114.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Decisions, how published. Volume, what to contain.

985. SECTION 1. The decisions of the Supreme Court of the State of Nevada shall be published in one good octavo volume of the size, as near as may be, of the Third Nevada Reports, containing about seven hundred pages, and to be substantially bound in calf binding. Said volume to contain the full reports of each year, commencing with the first day of January and ending with the thirty-first day of December, when the entire number do not make more than seven hundred pages of printed matter; but in cases where such reported decisions shall exceed seven hundred pages, the surplus shall go into the next succeeding volume. [As amended January 30, Stats. 1869, p. 47.]

Clerk to prepare for publication and index.

986. SEC. 2. It shall be the duty of the Clerk of the Supreme Court to prepare such decisions for publication, by giving the title of each cause, a syllabus of the points decided, a brief statement of the facts bearing on the points decided (when the same are not sufficiently stated in the opinion), the names of the counsel, and a reference to such authorities as are cited and have a special bearing on the case; and it shall also be the duty of said Clerk to make an index of each case as decided.

Clerk appointed Commissioner.

987. SEC. 3. The Clerk of the Supreme Court is hereby appointed Commissioner to contract with some competent and responsible publisher for printing and publishing each volume of Reports thus prepared by him. [As amended January 30, Stats. 1869, p. 48.]

Duty of Commissioner. Judges to accept.

988. SEC. 4. It shall be the duty of said Commissioner to have said Reports printed on good paper in clear and suitable type; and they and each of them shall be subject to the approval and acceptance of the Judges of said Supreme Court.

Proof sheets to be submitted to Judges.

989. SEC. 5. The proof sheets of said Reports, during the progress of their publication, shall be submitted to the Judges of the Supreme Court and receive their sanction.

State to be owner of edition.

990. SEC. 6. That the State may be the owner and have the benefit of the entire edition, it shall be the duty of said Commissioner to contract with his publisher that none of said Reports in excess of the six hundred volumes herein provided for shall be published by him. [As amended January 30, Stats. 1869, p. 48.]

991. SEC. 7. The title to said volume shall be "Nevada Reports," which, together with the name of the Reporter of the Supreme Court for the time being, and the number of the volume, shall be printed upon the back of said book. Title of volume.

992. SEC. 8. It shall be the duty of the Secretary of State, upon the reception of the Reports aforesaid, to distribute the same in the manner following: To each State and Territory of the United States, two copies; to each of the heads of Departments at Washington, one copy; to the Library of Congress, two copies; to the Nevada State Library, two copies; to each State officer, Justice of the Supreme Court, District Judge, District Attorney, County Clerk, and Justice of the Peace in this State, one copy; to each public library and literary association within this State, one copy. He shall also distribute said Reports to such literary and scientific institutions, publishers, and authors, as in his opinion may secure an interchange of works which may properly be placed in the State Library. All Reports distributed to State, District, and other officers in this State, shall be for the use of the office, and to be by the person receiving the same turned over to his successor in office, and the Secretary of State shall take proper receipts for such books. Duty of Secretary of State in distribution of Reports. Officer to turn over Reports to successor.

[SECS. 9 and 10, obsolete.]

An Act to appropriate funds for the preparation and publication of the eighth and ninth volumes of the Nevada Reports.

[Approved March 7, 1873, p. 192.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. [Appropriated four thousand five hundred dollars for one thousand copies of the eighth and ninth volumes.]

993. SEC. 2. The Secretary of State shall retain two hundred copies of each volume of the Nevada Reports hereafter published, for the use of the State Library and the Legislature, while in session; and after distribution, as now required by law, any surplus remaining in his possession shall be sold by him, at a price not exceeding five dollars per volume, and the money received from such sales shall be paid into the State Library Fund, without delay, after making such sales. Number of Reports to be retained. Surplus to be sold. Proceeds to go into Library Fund.

994. SEC. 3. The Commissioner shall annually file with the Board of Examiners a statement of his disbursements and expenditures in the preparation and publication of said Reports. Commissioner to file report of disbursements.

CHAPTER XLVI.

OF JUDGMENTS OF PROBATE COURT OF CARSON COUNTY; RECORDS; PROCEEDINGS UNDER UTAH LAWS; ELECTION AND ACTS OF PROBATE JUDGES AND PROSECUTING ATTORNEYS LEGALIZED.

SECTION 995. Decrees legalized; to be evidence.

RECORDS OF PROBATE COURT OF CARSON COUNTY.

996. Records deposited with Secretary of Territory.
997. Jurisdiction of Courts.
998. Certain proceedings legalized.
999. Certified copies of records.
1000. Time extended.

PROCEEDINGS UNDER UTAH LAWS LEGALIZED.

1001. Judgments valid.

ELECTION, ETC., OF PROBATE JUDGES AND DISTRICT ATTORNEYS.

1002. Election and acts of, legalized.

An Act concerning judgments of the Probate Court of Carson County.

[Approved October 31, 1861, p. 9.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Decrees legalized.

995. SECTION 1. That all decrees of the *de facto* Probate Court of Carson County, Territory of Nevada, rendered in actions of divorce, on and subsequent to the second day of March, one thousand eight hundred and sixty-one, be and the same are hereby legalized and rendered as valid in law, for all purposes, as though the same had been pronounced by a Court of competent power and authority to render the said decrees. And that the bonds of matrimony heretofore existing between the several parties to said decrees be and the same are hereby dissolved and rendered null and void, and that the said several parties to said decrees be and they are hereby restored to all the rights and privileges of unmarried persons, from the date of the said decrees to which they are parties respectively. That said several decrees shall be competent and sufficient evidence, in connection with this Act, to prove the facts contained in said decrees, and said evidence shall be as effectual for all purposes as though said decrees had been rendered by a Court of legal authority and full power.

To be evidence.

An Act in relation to the records of the Probate Courts of Carson and other counties of the Territory of Nevada.

[Approved December 19, 1862, p. 91.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

996. SECTION 1. The records of the Probate Court of the County of Carson, Utah Territory, and Carson County, Nevada Territory, now in the custody of the Clerk of the Probate Court of Storey County, shall be deposited by him in the office of the Secretary of this Territory, and retained by the Secretary aforesaid, and his successors in office, as other records and archives of this Territory. Records deposited with Secretary of Territory.

997. SEC. 2. The Probate Courts of the several counties of this Territory, respectively, where administrators or executors reside to whom letters of administration or executorship have been granted by either the Probate Court of Carson County, Utah Territory, or Carson County, Nevada Territory, and in which such estates have not been fully administered upon, are authorized and empowered to exercise and have jurisdiction in all such cases, and the business of such estates may be finally completed in such Courts respectively, and proceedings had in such cases with like effect as if proceedings had been originally had in such Probate Courts of this Territory. Jurisdiction of Courts.

998. SEC. 3. All proceedings had in the Probate Courts of this Territory since the subdivision of this Territory into counties by Act of November twenty-fifth, A. D. eighteen hundred and sixty-one, in reference to or concerning estates of deceased persons, where such proceedings were had under letters granted prior to the date of said Act of November twenty-fifth, eighteen hundred and sixty-one, are hereby legalized with like effect and to the same extent as if such administration had been granted in such Probate Court originally. Certain proceedings legalized.

999. SEC. 4. Certified copies of the papers and records in such matters of administration, obtained from the office of the Secretary aforesaid, or from the office of the Clerk of Storey County, shall have like effect in all proceedings as the originals, and in such cases as it may be necessary to proceed with the administration on any such estate, such certified copies may be filed and used in the proper Court with like effect as the originals. Certified copies of records.

1000. SEC. 5. Any estate, the business of which has not been finally settled up, in which letters may have been granted by such Probate Courts of Carson County, are hereby allowed six months additional time herefrom in which to settle up such business affairs, and to close the administration. Time extended.

An Act to legalize proceedings under the laws of Utah Territory prior to the organization of Nevada Territory.

[Approved February 20, 1864, p. 152.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Judgments valid.

1001. SECTION 1. No judgments of the Courts of justice rendered in the Territory of Utah, prior to the organization of Nevada Territory, whereby property was acquired within any portion of the present Territory of Nevada, shall be invalid for any informalities, and no property or rights of property acquired under such judgments shall be declared invalid by reason of any irregularity in the proceedings.

An Act to legalize the election and official acts of the several Probate Judges and Prosecuting Attorneys in the Territory of Nevada.

[Approved February 9, 1864, p. 49.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Election and acts of, legalized.

1002. SECTION 1. The election of the several Probate Judges and Prosecuting Attorneys of the several counties in this Territory, had on the first Wednesday of September, A. D. eighteen hundred and sixty-three, is hereby declared legalized, and all of the judgments, decrees, orders, prosecutions, or official acts of any kind or description whatsoever, done, rendered, made, or carried on by the several Probate Judges or Prosecuting Attorneys, elected at said election, are hereby declared as legal and valid in law as though the said officers had been legally elected and qualified.

CHAPTER XLVII.

OF PUBLIC RECORDS.

SECTION 1003. Carson County records to be delivered to Secretary of Territory.
1004. Copies of records.
1005. Transcript of records.

An Act relative to public records.

[Approved November 29, 1861, p. 285.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Carson County records to be delivered to Secretary of Territory.

1003. SECTION 1. That the books of records now in the possession of the Recorder of the County of Carson, upon the organization of the several counties of this Territory, by the election and qualification of Recorders and other officers therein, shall be delivered to the Secretary of the Territory, to be safely preserved by him as public records of the Territory.

Copies of records.

1004. SEC. 2. That on the request of a legally qualified Recorder of any county within this Territory, the Secretary of the Territory shall cause a true copy of all records in his office properly belonging to the county represented by such Recorder to be made, and certified to by him under oath.

Transcript of records.

1005. SEC. 3. That any county desiring a transcript of the records properly belonging to such county, shall furnish the Secretary of the Territory with suitable blank record books to contain such records, and the Secretary shall receive from the Territory, as compensation for all records so transcribed, forty cents per folio of one hundred words. [As amended December 19, Stats. 1862, p. 94.]

CHAPTER XLVIII.

OF THE TRANSFER OF JUDGMENTS, ACTIONS, AND PROCEEDINGS FROM PROBATE COURTS TO THE DISTRICT COURTS.

SECTION 1006. Judgment books and records, to be transferred to District Court.
1007. Judgments and orders transferred to District Courts.
1008. Actions transferred to District Courts.
1009. Duty of Clerks of District Courts.
1010. Rights valid in District Courts.

An Act providing for the transfer of judgments, actions, and proceedings from the several Probate Courts of the Territory to the District Courts of the State of Nevada.

[Approved February 1, 1865, p. 123.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Judgment books and records, to be transferred

1006. SECTION 1. All journals, judgment books, and books of any kind whatsoever, and all papers, pleadings, and documents heretofore filed and kept in the Probate Courts of the Territory of Nevada, or in the office of the Clerks of said Court, are hereby ordered to be transferred and delivered to the Clerks of the District Courts in the various counties of this State, where they shall remain as public records, proceedings, and files in said offices.

Judgments and orders transferred to District Courts.

1007. SEC. 2. All judgments and orders, whether interlocutory or final, heretofore entered in said Probate Courts, are hereby transferred to the District Courts in their respective counties, and said judgments and orders shall be as effectual and binding in said District Courts as they heretofore were in said Probate Courts. All writs proper to execute the same shall be issued out of, and all proceedings shall be had in said District Courts, and all liens and rights thereunder shall be continued and enforced in said District Courts, as fully as they might have been in said Probate Courts as heretofore existing.

Actions transferred to District Courts.

1008. SEC. 3. All actions, whether legal, equitable, or mixed; general or special proceedings of any and all kinds whatsoever, are hereby transferred from said Probate Courts to said District Courts, and shall be as effectual and binding in the one as in the other; and shall be conducted to final judgment and completion in said District Courts as fully as if they had been commenced originally therein; and authority is hereby conferred upon said District Courts and the officers thereof, to issue any and all writs, and take any and all proceedings necessary to carry into effect the provisions of this Act.

Duty of Clerks of District Courts.

1009. SEC. 4. Whenever any pending cause or other matter shall be transferred from said Probate Courts to said District Courts respectively, and any party to be affected thereby has a right to be heard thereon, it is hereby made the duty of the Clerk of said District Court to issue a citation to said party upon the filing of a precipe by the party desiring said proceedings, and said writ of citation shall notify the party thereof, and be duly served upon him according to law, ten days before the disposition of said motion or other proceedings, and after said ten days have elapsed the party so served shall be deemed to be in Court, and all proper proceedings shall then be had in the premises.

Rights valid in District Courts.

1010. SEC. 5. All rights heretofore acquired in said Probate Courts shall be deemed valid and enforced in said District Courts.

CHAPTER XLIX.

OF THE CONFIRMATION AND TRANSFER OF JUDGMENTS AND CERTAIN ACTIONS PENDING IN THE COURTS OF CALIFORNIA.

SECTION 1011. Confirmation of judgments.
1012. Transfer of actions at law.
1013. Liens.
1014. Transfers of proceedings and judgments.
1015. Rights acquired under laws and Courts of California made valid.

An Act to provide for the confirmation and transfer of judgments, and in relation to actions at law now pending in the Courts of California, affecting persons and property within the Counties of Esmeralda, Roop, and Mono, and any other territory that may hereafter become a part of the Territory of Nevada.

[Approved December 19, 1862, p. 37.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Confirmation of judgments

1011. SECTION 1. All actions at law or in equity heretofore prosecuted in the Courts of the State of California, having or exercising jurisdiction by virtue of the laws of said State over the territory of the Counties of Esmeralda, Mono, and Roop, if such counties, or any portion thereof, is now or shall become by cession or otherwise a portion of the Territory of Nevada, and any other territory that is or may hereafter become a part of the Territory of Nevada, together with all judgments and decrees of said Courts in such actions, are hereby ratified and confirmed, and made as binding and effectual for all purposes as if such actions had been prosecuted and such judgments had been rendered by a Court of competent jurisdiction within Nevada Territory.

Transfer of actions at law.

1012. SEC. 2. All actions at law or in equity now pending, and all rights of actions accruing in the Courts of the State of California, exercising jurisdiction by virtue of the laws of said State over the Territory, may be prosecuted to final judgment in said Courts of said counties, or in the proper Courts of Nevada Territory, upon the filing of a transcript of the proceedings had in the Courts of California with the Clerk of the proper Court of Nevada Territory; and all writs, proceedings, and judgments are hereby legalized, and shall be as binding and effectual for all purposes as if such actions had been commenced and prosecuted in the proper Courts of Nevada Territory.

Liens.

1013. SEC. 3. Upon the filing of the certified copy of any judgment in any action at law or in equity that may have been tried in any Court of the State of California, exercising jurisdiction over the Territory, as contemplated in the first section of this Act, in the respective offices of the County Recorder of such county, the same shall be a lien upon all the real property of the judgment debtor in said Courts; and all liens now acquired by virtue of any proceedings at law or in equity now pending in said Courts, shall hold and continue to bind the property affected by such lien until final judgment and the transfer thereof as provided for in the next section of this Act.

Transfers of proceedings and judgments.

1014. SEC. 4. A transcript of the docket of a Justice of the Peace, accompanied with a certificate of the Justice, or a transcript of the judgment, confirmed by a certificate and seal of the Clerk of such Court, or a copy of the original proceedings in such action, shall be conclusive evidence of the genuineness thereof in any Court of this Territory. When a certified transcript of any such judgment shall have been filed in the office of the Clerk of the District or Probate Court within the territory contemplated in the first section of this Act, the same shall become a judgment of the proper Courts of Nevada Territory, and the same proceedings as to the levy, seizure, and sale of property belonging to the judgment debtor, may be had as if such judgment had been rendered in the proper Court of the Territory of Nevada.

Rights acquired under the laws and Courts of California made valid

1015. SEC. 5. All rights that have been acquired by virtue of any Act of the Legislature of the State of California, or any proceedings in any of the Courts of California now claiming jurisdiction over the territory as contemplated in the first section of this Act, shall be deemed valid and remain in full force and effect from the passage of this Act.

CHAPTER L.

OF THE TIME OF COMMENCING CIVIL ACTIONS.

SECTION 1016. When may be commenced.
1017. Same.
1018. Suit by the State for real property.
1019. For the recovery of mining claims.
1020. For the recovery of real property.
1021. Where peaceable entry is made.
1022. Where adverse possession is held.
1023. Entry made under conveyance, etc.
1024. Adverse possession defined.
1025. Same.
1026. Same.
1027. Relation of landlord and tenant.

SECTION 1028. Descent cast; right not affected.
1029. Disabilities.
1030. Time not to run during same.
1031. Actions other than for recovery of real property.
1032. Action on account.
1033. Action for relief.
1034. Limitations applied to actions brought by the State.
1035. Actions, when deemed commenced.
1036. Absence of defendant at time cause of action accrues.
1037. Limitation, when not to run.
1038. Action by representative of deceased.
1039. Action by alien enemy.
1040. When judgment is reversed.
1041. When action stayed by injunction.
1042. Disability.
1043. Where disabilities coexist.
1044. Action to recover penalty against corporators.
1045. Acknowledgment to be in writing.
1046. Action on contract, etc., made out of the State.
1047. When action barred.
1048. Acts repealed; rights acquired not to be affected.
1049. Actions for the recovery of real property, when to be maintained.
1050. Act to take effect, when; proviso.

An Act defining the time of commencing civil actions.

[Approved November 21, 1861, p. 26.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

1016. SECTION 1. Civil actions can only be commenced within the periods prescribed in this Act, after the cause of action shall have accrued, except where a different limitation is prescribed by statute. When may be commenced.

1017. SEC. 2. When the cause of action has already accrued, the party entitled, and those claiming under him, shall have, after the passage of this Act, the whole period herein prescribed, in which to commence an action. Same.

1018. SEC. 3. The State of Nevada will not sue any person for, or in respect to, any real property, or the issues or profits thereof, by reason of the right or title of the State to the same, unless: First, such right or title shall have accrued within ten years before any action or other proceeding for the same; or, unless, second, the State, or those from whom it claims, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years. [As amended, Stats. 1867, p. 85.] Suit by the State for real property.

1019. SEC. 4. No action for the recovery of mining claims, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, or those through or from whom he claims, were seized or possessed of such mining For the recovery of mining claims.

claim, or were the owners thereof, according to the laws and customs of the district embracing the same, within two years before the commencement of such action. Occupation and adverse possession of a mining claim shall consist in holding and working the same, in the usual and customary mode of holding and working similar claims in the vicinity thereof. All the provisions of this Act, which apply to other real estate, so far as applicable, shall be deemed to include and apply to mining claims; *provided,* that in such application "two years" shall be held to be the period intended whenever the term "five years" is used; *and, provided further,* that when the terms "legal title" or "title" are used, they shall be held to include title acquired by location or occupation, according to the usages, laws, and customs of the district embracing the claim. [As amended, Stats. 1867, p. 85.]

For the recovery of real property.

1020. SEC. 5. No cause of action, or defense to an action, founded upon the title to real property, or to rents, or to services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within five years before the committing of the act in respect to which said action is prosecuted or defense made. [As amended, Stats. 1867, p. 85.]

Where peaceable entry is made.

1021. SEC. 6. No peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff for possession within one year from the making of such entry, or within five years from the time when the right to bring such action accrued. [As amended, Stats. 1867, p. 86.]

Where adverse possession is held.

1022. SEC. 7. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof, within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under, and in subordination to, the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for five years before the commencement of such action.

Under some circumstances lapse of time is a good defense, although the Statute of Limitations is not specially pleaded.—Gottschall et al. v. Melsing et al., 2 Nev., p. 185.

When a debt, secured by mortgage, is barred by the Statute of Limitations, the mortgage is not thereby extinguished.—Henry v. Confidence G. & S. M. Co., 1 Nev., p. 619.

Even when all action or legal proceeding on the mortgage is barred, still, if the mortgagee gets rightful possession of the premises mortgaged, he may retain the same until his debt is paid.—Id.

The Statute of Limitations provides a limitation of six months to the maintenance of an action on contracts for the payment of money made out of this State; but the same statute would only bar an action to foreclose a mortgage executed on property within this State to secure such debt after the lapse of four years.—Id.

Query: Can a party come into a Court of equity and ask that Court for relief to which, by his own showing, he is equitably entitled only upon the performance of certain acts, and admit these acts have not been performed, but aver in excuse that lapse of time and the Statute of Limitations has excused the performance thereof.—Id.

When an action has been brought in due time for one piece or portion of property, it would be bad practice to allow the complaint to be so amended as to include another piece of property which would otherwise be protected from recovery by the Statute of Limitations, and thus embarrass the defense under that statute.—Bullion Mining Co. v. The Crœsus G. & S. Co., 2 Nev., p. 168.

A. and B. negotiate a loan in the State of California; A. receives the money, and executes, on his part, a joint note, and also a mortgage on property situate in this State, as security for the money; this note and mortgage are then sent to Humboldt County, Nevada, where they are also executed by B., and the mortgage placed on record. *Held*, that the note and mortgage were consummated in this State, and are not barred by the six months Statute of Limitations, which applies to notes, etc., executed out of this State. Even if the note was barred, the mortgagee might foreclose the mortgage, and subject the mortgaged property.—Reed v. Edwards et al., 2 Nev., p. 262.

Where a bond is drawn up in California, and there signed and sealed by one obligor, and then sent to this State to be signed and sealed by the remaining obligor, the finishing act in the execution of the bond having been done in this State, it must be held in regard to the Statute of Limitations as a bond executed in this State, and not in another State.—Alcalda v. Morales, 3 Nev., p. 132.

A party holding a mortgage is not barred of his right to foreclose the same until four years shall have elapsed from the accruing of the action, although the statute may have barred an action at law on the debt before that time.—Mackie v. Lansing, 2 Nev., p. 302.

A party taking a second mortgage during the period intervening between the time when the statute bars the action at law, and when it bars the proceeding to foreclose, holds his lien subject to the first mortgage.—Id.

Entry made under conveyance, etc.

1023. SEC. 8. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises, under claim of title, exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim, for five years, the premises so included shall be deemed to have been held adversely, except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

Adverse possession defined. 1024. SEC. 9. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases:

First—Where it has been usually cultivated and improved.

Second—Where it has been protected by a substantial inclosure.

Third—Where (although not inclosed) it has been used for the supply of fuel, or of fencing timber, for the purposes of husbandry; or for the use of pasturage, or for the ordinary uses of the occupant.

Fourth—Where a known lot, or single farm, not exceeding three hundred and twenty acres in extent, has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Same. 1025. SEC. 10. Where it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon a written instrument, or a judgment, or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

Same. 1026. SEC. 11. For the purpose of constituting an adverse possession, by a person claiming title, not founded upon a written instrument, judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases only:

First—Where it has been protected by a substantial inclosure.

Second—Where it has been usually cultivated or improved.

Relation of landlord and tenant. 1027. SEC. 12. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of five years from the expiration of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Descent cast. Right not affected. 1028. SEC. 13. The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

Disabilities 1029. SEC. 14. If a person entitled to commence any action for the recovery of real property, or to make an entry or defense, founded on the title to real property, or to rents, or services, out of the same, be, at the time such title shall first descend, or accrue, either: First, within the age of twenty-one years; or, second, insane; or, third, imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or, fourth, a married woman:

1030. SEC. 15. The time during which such disability shall continue, shall not be deemed any portion of the time in this Act limited for the commencement of such action, or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but, such action shall not be commenced, or entry or defense made, after that period.

Time not to run during same.

1031. SEC. 16. Actions other than those for the recovery of real property can only be commenced as follows: (1) Within five years—an action upon a judgment or decree of any Court of the United States, or of any State or Territory within the United States. Within four years—an action upon any contract, obligation, or liability, founded upon an instrument in writing, except those mentioned in the preceding section. Within three years:

Actions other than for recovery of real property.

First—An action upon a liability created by statute other than a penalty or forfeiture.

Second—An action for trespass upon real property.

Third—An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.

Fourth—An action for relief, on the ground of fraud; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

Within two years:

First—An action upon a contract, obligation, or liability not founded upon an instrument of writing.

Second—An action against a Sheriff, Coroner, or Constable, upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution.

Third—An action upon a statute for a penalty or forfeiture where the action is given to an individual, or an individual and the State, except when the statute imposing it prescribes a different limitation.

Fourth—An action for libel, slander, assault, battery, or false imprisonment.

Fifth—An action upon a statute for a forfeiture or penalty to the State.

Sixth—An action against a Sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

Seventh—An action on an open account for goods, wares, and merchandise sold and delivered.

Eighth—An action for any article charged in a store account. [As amended, Stats. 1867, p. 86.]

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(1) ACTIONS AGAINST TRUSTEES—NATURE AND LIMITATIONS OF.—In case of the purchase of property alleged to be in

trust, where it became necessary for the plaintiff to establish facts out of which the trust arose, and then to show that the trust property had been converted into money: *Held*, that under the circumstances the ordinary action for money had and received to plaintiff's use would not lie against the trustee, and that the section of the Statute of Limitations applicable was the four years' limitation and not the two years' one.—White v. Sheldon, 4 Nev., p. 280.

STATUTE OF LIMITATIONS AS TO TRUST.—The Statute of Limitations does not apply to those cases of express and direct trusts in which the *cestui que trust* has not full and adequate legal remedy; but where he has such remedy the statute will toll the equitable remedy precisely as it would the legal.—Id.

LIMITATIONS OF EQUITABLE ACTIONS.—The Statute of Limitations embraces all characters of actions, legal and equitable, and is as obligatory upon the Courts in a suit in equity as in actions at law.—Id.

WHEN CAUSE OF ACTION ACCRUES AGAINST TRUSTEE OF EXPRESS TRUST.—A *cestui que trust* of an express trust has no right of action until the trust is denied or some act is done by the trustee inconsistent with the trust; and until then the Statute of Limitations does not begin to run.—Id.

Action on account.

1032. SEC. 17. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side. (1)

(1) "MUTUAL, OPEN, AND CURRENT ACCOUNTS."—A "mutual, open, and current account, where there have been reciprocal demands," within the meaning of section seventeen of the Statute of Limitations, is one consisting of demands upon which each party respectively might maintain an action.—Warren v. Sweeney, 4 Nev., p. 101.

THE SAME.—If all the items on one side of an account were intended by the parties as payments or credits on account, it is not a mutual, open, and current account where there are reciprocal demands.—Id.

PERSONAL PROPERTY DELIVERED ON ACCOUNT.—If an article of personal property be delivered to a creditor, with an understanding between him and the debtor that it shall apply as payment, the transaction would not constitute a mutual account, consisting of reciprocal demands between them. Otherwise; if delivered without such understanding.—Id.

MODIFICATION OF JUDGMENT.—Where a judgment of nonsuit was rendered, but the judgment actually entered was in form a judgment on the merits, the Supreme Court on appeal modified it to conform to the fact, at respondent's costs.

PER BEATTY, C. J., DISSENTING.—Whenever there is an open, running, unsettled account on one side, and money or any article of personal property is either paid or delivered, to be credited on the other side of the account, it constitutes a "mutual, open, and current account, with reciprocal demands between the parties."—Id.

Action for relief.

1033. SEC. 18. An action for relief, not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued.

Limitations applied to actions brought by the State.

1034. SEC. 19. The limitations prescribed in this Act shall apply to actions brought in the name of the State, or for the benefit of the State, in the same manner as to actions by private parties. [As amended, Stats. 1867, p. 86.]

Actions, when deemed commenced

1035. SEC. 20. An action shall be deemed to be commenced, within the meaning of this Act, when the complaint has been filed in the proper Court, and summons issued and placed in the hands of the Sheriff of the county, or other person authorized to serve the same.

Absence of defendant at time cause of action accrues.

1036. SEC. 21. If, when the cause of action shall accrue against a person, he be out of the State, the action may be commenced within the time herein limited after his return to the State; and if after the cause of action shall have accrued he depart the State, the time of his absence shall not be part of the time prescribed for the commencement of the action. [As amended, Stats. 1867, p. 86.] (1)

(1) Section 21 of the Statute of Limitations does not in any way qualify Section 5 of the same Act.—The Chollar-Potosi Mining Company v. Kennedy & Keating, 3 Nev., p. 361.

Section 5 prescribes the general rule as to limitations of real actions or actions for the possession of real estate, and Sections 14 and 15 declare the only exceptions to that rule.—Id.

Section 16 declares the limitation in personal actions, and Section 21 the exceptions to the general rule.—Id.

A. has been for five years in constant use of a piece of land as a road. This shows a prima facie right to use it as such. B. fences up the road, and when sued says: "I appropriated this land seven years since." This is not a good defense, because he does not show he has been in possession within five years.—Id.

FOREIGN CORPORATION CANNOT PLEAD STATUTE OF LIMITATIONS.—Foreign corporations are within the exception of the Statute of Limitations as to persons absent from the State when a cause of action accrues against them.—Robinson et als., Resp., v. The Imperial Silver Mining Company, App., 5 Nev., p. 44.

CONSTRUCTION OF STATUTE OF LIMITATIONS.—Sec. 21 of the Statute of Limitations (Stats. 1861) in the use of the expression "cause of action," includes real actions or actions as to real estate as well as personal action.—Id.

CHOLLAR-POTOSI COMPANY V. KENNEDY, 3 Nev., p. 361, in so far as it expresses an opinion on public land, is not an appropriation of land sufficient for a mill site, nor is the mere appropriation of a mill site an appropriation of water for milling purposes.—Id.

STATUTE OF LIMITATIONS—ABSENCE FROM STATE.—A defendant, to avail himself of the bar of the Statute of Limitations, must have been within the State for the full time limited by the statute after the cause of action accrued against him.—Todman v. Purdy, 5 Nev., p. 238.

CONSTRUCTION OF SECTION TWENTY-ONE OF STATUTE OF LIMITATIONS.—Sec. 21 of the Statute of Limitations (Stats. 1867, p. 86,) has entirely overthrown the old rule that the statute, when once it began to run, continued to run, notwithstanding absence from the State.—Id.

Limitation, when not to run.

1037. SEC. 22. If a person entitled to bring an action, other than for the recovery of real property, except for a penalty or forfeiture, or against a Sheriff or other officer for an escape, be, at the time the cause of action accrued, either: First, within the age of twenty-one years; or, second, insane; or, third, imprisoned on a criminal charge, or in execution under the sentence of a criminal Court, for a term less than his natural life; or, fourth, a married woman; the time of such disability shall not be a part of the time limited for the commencement of the action.

Action by representative of deceased.

1038. SEC. 23. If the person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration. (1)

(1) When a party dies owing a debt not barred by the Statute of Limitations at his death, the holder of the claim has one year after administration granted on the debtor's estate within which to bring his action, although the action would have been barred in less than one year if the debtor had lived.—Wick v. O'Neal, Admr., 2 Nev., p. 303.

This extension of the time within which the action may be brought is subject only to this qualification, that if the claim is presented to the administrator and rejected, suit must be brought thereon within three months after rejection.—Id.

This twelve months' extension applies to all classes of cases, as well those debts contracted out of the State, and which are otherwise barred by six months' limitation, as others.—Id.

Action by alien enemy.

1039. SEC. 24. When a person shall be an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action; *provided*, however, that nothing in this section shall be so construed as to consider any citizen or person of any State engaged in rebellion against the United States Government as an alien.

When judgment is reversed.

1040. SEC. 25. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after the reversal.

When action stayed by injunction.

1041. SEC. 26. When the commencement of one action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

Disability.

1042. SEC. 27. No person shall avail himself of a disability, unless it existed when his right of action accrued.

Where disabilities coexist.

1043. SEC. 28. When two or more disabilities coexist, at the time the right of action accrues, the limitation shall not attach until they all be removed.

Action to recover penalty against corporators

1044. SEC. 29. The preceding sections of this Act shall not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

Acknowledgment to be in writing.

1045. SEC. 30. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this statute, unless the same be contained in some writing signed by the party to be charged thereby. (1)

(1) STATUTE OF LIMITATIONS—NEW PROMISES.—The Statute of Limitations (Stats. 1861, p. 31,) excludes an acknowledgment or promise not in writing as evidence of a new or continuing contract to take a case out of the operation of the statute.—Wilcox v. Williams, 5 Nev., p. 206.

STATUTE OF LIMITATIONS—PART PAYMENT.—Part payment is not sufficient as a new promise to take a case out of the operation of the Statute of Limitations.—Id.

STATUTE OF LIMITATIONS—ACKNOWLEDGMENTS MUST BE DISTINCT.—An acknowledgment, to take a case out of the operation of the Statute of Limitations, must be clear, explicit, and direct to the point that the debt is due.—Id.

STATUTE OF LIMITATIONS—BURDEN OF PROOF ON NEW PROMISE.—If a plaintiff, relying upon an acknowledgment in writing to take a case out of the operation of the Statute of Limitations, proves a general acknowledgment of indebtedness, the burden of proof is on the defendant to show that it related to a different demand from the one in controversy.—Id.

STATUTE OF LIMITATIONS—CONDITIONAL NEW PROMISE.—A promise to pay a debt when able, is not sufficient of itself as an acknowledgment or new promise to take a case out of the operation of the Statute of Limitations.—Id.

SEC. 31. [Amended, Stats. 1861, p. 40, Chap. 20, and the amendatory Act repealed, Stats. 1867, p. 87.]

Action on contract, etc., made out of the State.

1046. SEC. 32. An action upon a judgment, contract, obligation, or liability for the payment of money or damages obtained, made, executed, or incurred out of this State, can only be commenced as follows: (1)

First—Within one year, when prior to the passage of this Act more than two, or less than five, years have elapsed since the cause of action accrued.

Second—Within six months, when prior to the passage of this Act more than five years have elapsed since the cause of action accrued.

Third—Within two years, in all other cases, after the cause of action accrued. A right of action shall be deemed to have accrued on a judgment at the time of its rendition. [As amended, Stats. 1867, p. 87.]

(1) EFFECT OF NEW STATUTE OF LIMITATIONS.—The Statute of Limitations in force at the time of suit brought governs the remedy on a contract; provided, in case of the passage of a new statute after the making of the contract, a reasonable time be given to bring suit.—Wilcox v. Williams, 5 Nev., p. 206.

CONSTRUCTION OF NEW STATUTE OF LIMITATIONS.—The Statute of Limitations of 1862 (Stats. 1862, p. 82), which provided that suit should be brought on a contract made without the State within six months after the cause of action accrued, was amended in 1867 (Stats. 1867, p. 85,) so as to extend the period of limitation on such contracts to two years. *Held*, that after the passage of the latter Act suit might be brought on any contract made out of the State, the cause of action on which had accrued within two years, though it might have been barred under the former statute.—Id.

STATUTES OF LIMITATION GENERALLY AFFECT THE REMEDY AND NOT THE RIGHT.—Statutes of Limitation apply only to the remedy on a contract, and not to the right or obligation; so that, though the statutory bar has fully run against a contract where made, yet, if it is to be performed at another place, and it is not there barred, it may be enforced, provided the statute has not absolutely, by its terms, extinguished and nullified the claim itself.—Id.

PROMISSORY NOTE PAYABLE IN CALIFORNIA OR NEVADA. A promissory note, made in California, and payable "in California or Nevada," can, at payer's option, be paid in either State, and therefore cannot be construed into a contract to be performed in Nevada, so as to bring it within the purview of the rule touching the place of payment.—Id.

When action barred.

1047. SEC. 33. When the cause of action has arisen in any other State or Territory of the United States, or in a foreign country, and by the laws thereof an action there cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this State. [As amended March 5, Stats. 1867, p. 87.]

1048. SEC. 10. Sections thirty-three and thirty-four of said Act, and the Act entitled "An Act amendatory of section thirty-four of an Act entitled 'An Act defining the time of commencing civil actions,'" approved November twenty-first, eighteen hundred and sixty-one, and the Act approved November twenty third, eighteen hundred and sixty-one, entitled "An Act to amend an Act to define the time of commencing civil actions," approved by the Governor on the twenty-first day of November, eighteen hundred and sixty-one, are hereby repealed; but nothing herein contained shall be construed to affect rights already acquired, or defenses existing, at the time of the passage of this Act; and in computing the time within which to commence actions, the time which had elapsed at the time of the passage of this Act, and which might have been plead prior thereto, shall be deemed and held a part of the time herein provided for. (a) [As amended March 5, Stats. 1867, p. 87.]

Acts repealed.

Rights acquired not to be affected.

(a) Sec. 34 of original Act was amended by Act of December 19, (Stats. 1862, p. 82), and the time for commencing actions on judgments obtained and contracts, etc., made or executed without the State, was limited to six months.

The Act of 1867, p. 87, amends Sec. 33 of Act of 1861, p. 26 (Sec. 1047), and the same Act of 1867 repeals Sec. 33 of Act of 1861 (Sec. 1048).

An Act supplementary to an Act of the Governor and Legislative Assembly of the Territory of Nevada, approved November twenty-first, eighteen hundred and sixty-one, entitled "An Act defining the time of commencing civil actions."

[Approved February 27, 1869, p. 95.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

1049. SECTION 1. No action for the recovery of real property, or for the recovery of the possession thereof, other than mining claims, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question, within five years before the commencement thereof.

Actions for the recovery of real property, when to be maintained

1050. SEC. 2. This Act shall be in force and take effect from and after its passage, except as to any actions now pending in any of the Courts of this State.

Act to take effect, when. Proviso.

CHAPTER LI.

OF JURIES.

SECTION 1051. Qualified jurors.
1052. Manner of selecting; list, how prepared; corrections of; where kept.
1053. Jury box.
1054. Trial jurors, how drawn and summoned; venire, when returned.
1055. Additional trial jurors, how drawn; venire for.
1056. Names in box to be exhausted.
1057. When names are exhausted.
1058. Grand jurors, how selected.
1059. Exemptions; bounds may be established; payment of twenty-five dollars to the clerk; Jury Fund; how applied; account to be kept.
1060. Court may excuse.
1061. Penalty for non-attendance.
1062. Pay of jurors.
1063. Acts repealed.

An Act concerning juries.

[Approved March 5, 1873, p. 126.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Qualified jurors.

1051. SECTION 1. Every qualified elector of the State, whether registered or not, who has not been convicted of treason, felony, or other infamous crime, and who is not rendered incapable by reason of physical or mental infirmity, is a qualified juror of the county in which he resides, or of the county to which it is attached for judicial purposes.

Manner of selecting.

1052. SEC. 2. The District Judge of the district, and the County Clerk of each county of the State in which a District Court may sit, shall as soon as practicable after the passage of this Act, enter in a book to be provided and kept for that purpose, and known as the "Jury List," the name of every qualified juror of the county so far as the same can be ascertained by them. Such names shall be alphabetically arranged; and opposite the name of each person shall be noted, under appropriate headings, his residence and occupation, when known; and when any juror procures his exemption from services as hereinafter provided, that fact, and the date thereof, shall also be noted opposite his name. At each ensuing term of the Court, it shall be the duty of the Judge thereof to cause said jury list to be amended and corrected, by adding thereto the names of all qualified jurors not already included therein, and by striking therefrom the names of all such as have died, or

List, how prepared.

Corrections of.

for any reason ceased to be qualified jurors of the county. For the purpose of enabling such amendment and correction to be made, any person, whose name is already included in said list, may present to the Court the names of other qualified jurors of the county, who are not included therein; and it shall be the duty of the Judge to order such names to be added to the list if it satisfactorily appear that they are qualified jurors of the county. Said jury list shall be kept in the office of the County Clerk, and shall be at all proper times subject to the inspection of any citizen of the county.

Where kept.

Jury box.

1053. SEC. 3. The names which are entered upon the "Jury List" shall, at the same time, be written on separate slips of paper, and deposited in a box, to be provided and kept for that purpose, and known as the jury box. Said box, when not in use as herein provided, shall be kept securely locked by the County Clerk.

Trial jurors, how drawn and summoned.

1054. SEC. 4. To constitute the regular panel of trial jurors for any term of the District Court, a list of not exceeding fifty names shall be drawn from the jury box, either before or after the commencement of the term. If the panel be drawn before the commencement of the term the drawing shall take place in the office of the County Clerk, during regular office hours; if after the commencement of the term, in open Court; and in either case in the presence of all persons who may choose to witness it. The drawing shall be conducted as follows: The number to be drawn having been previously determined by the Judge, the box containing the names of the jurors shall first be thoroughly shaken; it shall then be opened, and the Judge and Clerk shall, alternately, draw therefrom one ballot, until of non-exempt jurors the number determined upon is obtained. A list of the names so obtained shall be made out and certified by the Judge and Clerk, which shall remain in the Clerk's office, subject to inspection by any officer or attorney of the Court; and the Clerk shall immediately issue a venire, directed to the Sheriff of the county, commanding him to summon the persons so drawn as trial jurors, to attend in Court at such time as the Judge may have directed; and the Sheriff shall summon such jurors, and make return of the venire, at least two days before the day named for their appearance; after which the venire shall be subject to inspection by any officer or attorney of the Court.

Venire, when returned.

Additional trial jurors, how drawn.

1055. SEC. 5. When, at any time during a term of the District Court, it shall become necessary to summon additional trial jurors, the Judge or Clerk shall, in open Court, in the manner hereinbefore prescribed, draw from the jury box such number of names as may be requisite; *provided*, that in case any juror so drawn reside at too great a distance from the Court to be conveniently summoned within the time ordered for the return of the venire, his name may be returned to the box and another drawn in its place; *and, provided further*, that in all drawing of jurors under this Act, the names of persons known to be exempt from jury service may be thrown out and disregarded. The Clerk shall issue a venire, directed to the Sheriff, to summon such additional jurors, to attend at such time as the Court may

Venire for.

have directed, and the Sheriff shall summon the same, and return his venire with all possible diligence.

Names in box to be exhausted. 1056. SEC. 6. When a name has been drawn from the jury box it shall not be returned thereto until the box has been exhausted; except that when a juror drawn is not summoned, or fails to appear, or after appearing is excused by the Judge from serving, his name shall be returned to the box to be drawn again.

When names are exhausted. 1057. SEC. 7. When all the names in the jury box have been exhausted, it shall be the duty of the Judge and Clerk to replace therein separate slips of paper containing the names of all persons included in the corrected jury list, and thereafter trial jurors shall be drawn therefrom as before.

Grand jurors, how selected. 1058. SEC. 8. It shall be the duty of the District Judge, and any one of the County Commissioners of the county, at least once in each year, and as much oftener as the public interest may require, to select from the jury list twenty-four persons who shall be summoned to serve as grand jurors, at such time as the Judge may order; out of the number so summoned the Court shall select seventeen persons to constitute a grand jury. If from any cause a sufficient number do not appear, or those who appear are excused or discharged, an additional number, sufficient to complete the grand jury, shall be selected from the jury list by the Judge and Clerk, and summoned to appear in Court at such time as the Court may direct.

Exemptions. 1059. SEC. 9. The following named persons, and no others, may be exempted from serving as grand or trial jurors: Any Judge, Justice of the Peace, County Clerk, Sheriff, Assessor, Constable, practicing attorney, or physician, and one half of all members of each regularly enrolled fire company in this State, and all officers of such fire companies, not exceeding ten in number for each company. The Judges of the several District Courts may, by an order entered upon the minutes of their Courts, prescribe bounds in their several counties, and all persons residing without such bounds may be exempted from serving on juries in the manner hereinafter prescribed. Any person residing without such bounds may present his affidavit, showing his exemption to the Court or Judge, and if the Judge shall be satisfied therefrom that he is one of the persons entitled to be exempted under the provisions of this Act, he shall indorse thereon an order to the Clerk to make an entry on the jury list opposite the name of the applicant, showing that he is exempted from jury service till the first Monday of January next ensuing. Upon presentation of this order to the Clerk, and upon payment to him of the sum of twenty-five dollars, in gold coin, it shall be the duty of the Clerk to grant him a certificate showing the payment of said sum, and specifying that he is exempted from jury service until the first Monday of January next ensuing. The Clerk shall also file the affidavit and order, and make the proper entry on the jury list. The moneys coming into the hands of the Clerk under the operation of this law shall constitute a Jury Fund, for the safe keeping and due application of which the Clerk and his bondsmen shall be responsible on his official bond. It shall be applied, first, to the pay-

Bounds may be established.

Payment of twenty-five dollars to the Clerk.

Jury Fund.

How applied. **Account to be kept.**

ment to the Clerk of fifty cents for each juror exempted, for his services in filing the affidavit and order and issuing the certificate herein provided for, and two per cent of the whole sum collected for all other services rendered in pursuance of this Act. The balance of the Fund shall be applied to the payment of the compensation of the jurors who serve on trial juries. It shall be the duty of the Clerk to keep an accurate account of all moneys received and disbursed under the provisions of this section, and to submit the same to the inspection of the Court whenever it is so ordered; and it shall be the duty of the Judge to inspect and verify said account at the close of each term of the Court. It shall also be the duty of the Clerk to keep an accurate account of the attendance of each juror during the term of the Court, and at the close of the term to ascertain the amount due each juror for mileage and attendance, after deducting the amount received by him as fees in civil cases. If there is money enough in the Jury Fund to pay the jurors in full, they shall be paid therefrom. If the amount in the Jury Fund is insufficient to pay the jurors in full, it shall be divided among them in proportion to the amounts due them respectively, and the balance shall be paid out of the General Fund of the County Treasury, after the satisfaction of any demands against said Fund previously allowed.

Court may excuse.

1060. SEC. 10. At any time during the term the Court may, in its discretion, excuse temporarily, or for the term, any juror on account of sickness or physical disability, or serious illness or death of a member of his immediate family.

Penalty for non-attendance

1061. SEC. 11. Any person summoned as provided in this Act to serve as a juror, who shall fail to attend and serve as such juror, shall, unless excused by the Court, be fined in any sum not exceeding five hundred dollars, in the discretion of the Court, and be imprisoned in the County Jail until such fine be paid, at the rate of two dollars per day.

Pay of jurors.

1062. SEC. 12. Each juror summoned in pursuance of this statute, unless he be excused by the Court from serving on the day he is summoned to attend, shall receive three dollars per day for each and every day he may be in attendance on Court, and fifteen cents per mile in traveling to and returning from Court, to be paid as hereinbefore provided.

Acts repealed.

1063. SEC. 13. An Act entitled "An Act concerning juries," approved March third, eighteen hundred and sixty-six, and all Acts repealed by that Act, and all Acts amendatory of or supplemental thereto, are hereby repealed; also, an Act entitled "An Act concerning compensation of jurors," approved March fifth, eighteen hundred and sixty-nine, and all Acts amendatory of or supplemental thereto, are hereby repealed.

CHAPTER LII.

OF PROCEEDINGS IN CIVIL CASES.

TITLE I.—OF THE FORM OF CIVIL ACTIONS AND THE PARTIES THERETO.

SECTION 1064. Only one form of action.
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1066. Question of fact, not put in issue by pleadings, how tried.
1067. Actions, in whose name prosecuted.
1068. Set-off, when not prejudiced.
1069. Action, by executor, etc.
1070. When a married woman is party.
1071. Defense, by wife alone.
1072. Infant, how to appear.
1073. Guardian, when appointed.
1074. Injury to child, etc.
1075. Plaintiffs, who may be joined.
1076. Defendant, who may be made.
1077. Parties, who to be joined.
1078. Separately liable, may be joined.
1079. Death of party or transfer of interest.
1080. Controversy, when Court to determine.

TITLE II.—OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

1081. Where subject matter is situated.
1082. Where cause of action arose.
1083. Where parties reside.
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Conflicting Rights to Mining Claims.

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An Act to regulate proceedings in civil cases in the Courts of justice of this State, and to repeal all other Acts in relation thereto.

[Approved March 8, 1869, p. 196.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

TITLE I. (a)

Of the form of civil actions and the parties thereto.

Only one form of action.

1064. SECTION 1. There shall be in this State but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

Parties designated.

1065. SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Question of fact, not put in issue by pleadings, how tried.

1066. SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

(a) The provisions of this Title as to parties to actions are made applicable to Justices' Courts, by Sec. 1570, post.

1067. SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this Act. Actions, in whose name prosecuted.

1068. SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of, the assignment; but this section shall not apply to a negotiable promissory note, or bill of exchange, transferred in good faith, and upon good consideration, before due. Set-off, when not prejudiced.

1069. SEC. 6. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another. Action, by executor, etc.

1070. SEC. 7. When a married woman is a party, her husband shall be joined with her; except that: First—When the action concerns her separate property, she may sue alone. Second—When the action is between herself and her husband, she may sue or be sued alone. When a married woman is party.

1071. SEC. 8. If a husband and wife be sued together, the wife may defend for her own right. Defense, by wife alone.

1072. SEC. 9. When an infant is a party, he shall appear by guardian, who may be appointed by the Court in which the action is prosecuted, or by a Judge thereof. Infant, how to appear.

1073. SEC. 10. The guardian shall be appointed as follows: First—When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or, if under that age, upon the application of a relative or friend of the infant. Second—When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant. Guardian, when appointed.

1074. SEC. 11. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward. Injury to child, etc.

1075. SEC. 12. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Act. Plaintiffs, who may be joined.

1076. SEC. 13. Any person may be made a defendant, who has or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. Defendant, who may be made.

1077. SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the Parties, who to be joined.

question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the Court, one or more may sue or defend for the benefit of all. Tenants in common, joint tenants, or copartners, or any number less than all, may jointly or severally bring or defend, or continue the prosecution or defense, of any action for the enforcement of the rights of such person or persons. (1)

(1) Persons jointly liable must all be made defendants, and a joint judgment rendered against all.—Keller v. Blasdel et al., 1 Nev., p. 491.

An assignee of an account may sue on it in his own name, though the assignor have an interest in it. The assignor, in such case, need not be made a party.—Carpenter v. Johnson and Waddell, 1 Nev., p. 331.

PARTIES TO SUITS AFFECTING THE LEGAL TITLE TO REAL ESTATE.—Where real estate was sold by the Sheriff under a decree foreclosing a mortgage upon it, and subsequently was again sold by the Sheriff under a decree foreclosing a mechanic's lien upon it, in a suit commenced after the first sale was made, and the first purchaser was not made a party to the second suit: *Held*, that the Sheriff's deed under the second sale did not divest or affect the legal title in the first purchaser.—Smith et al., Claimants, 4 Nev., p. 254.

PROPER AS DISTINGUISHED FROM NECESSARY PARTIES.—In a suit to foreclose a mortgage on real estate, the holder of a mechanic's lien attaching prior to the mortgage may be a *proper* party, but he is not a *necessary* party to pass the legal title to a purchaser under the decree.—Id.

NON-JOINDER OF DEFENDANTS IN ACTIONS EX DELICTO.—It is unnecessary to join as defendants in an action for damages for trespass all persons who unite in committing it; all or any may be sued.—Mandelbaum v. Russell & Crow, 4 Nev. p. 551.

When a mortgage is executed by a trustee upon the trust estate, the *cestui que trust* is a necessary party to a suit for foreclosure, and if the *cestui que trust* is a *feme covert*, her husband is a necessary party.—Marvich v. Grier and Smith, 3 Nev., p. 52.

Where the wife, who has no interest in the premises, and who was dead at the time of bringing an action to foreclose a mortgage, is made defendant with her husband, the proper practice, upon her death being suggested, would be to strike out her name and allow the plaintiff to proceed against her husband.—Fowler v. Hueston, 1 Nev., p. 469.

Where one of several joint contractors dies, the survivors may be proceeded against without uniting the representatives of the deceased.—Id.

Where the death of one of the defendants is put in issue by the pleadings, it should, like every other issue of fact, be left to the jury.—Id.

WIFE NOT A PARTY TO ACTION TO RECOVER COMMON PROPERTY.—In a suit on a note given in the name of a wife, though in fact the common property of herself and husband, she has no such interest as to make her a necessary or proper party.—Crow v. Van Sickle, 6 Nev., p. 146.

1078. SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff. **Separately liable, may be joined.**

1079. SEC. 16. An action shall not abate by the death, or other disability, of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the Court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action. After verdict shall have been rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law. (1) **Death of party or transfer of interest.**

(1) SUBSTITUTION OF ASSIGNEE AS PLAINTIFF.—Where a person claiming to be assignee of a cause of action is substituted as plaintiff, and the cause proceeds, and a judgment is rendered in his name, it is too late to object in the appellate Court that he did not file a supplemental complaint, showing his interest. Virgin v. Brubaker, 4 Nev., p. 31.

SUBSTITUTION AFTER ISSUES MADE UP.—After the issues in a cause are all made up, a person claiming to be assignee of the cause of action may, under section sixteen of the Practice Act, be substituted as plaintiff; and, if so substituted, it is not necessary for him to file a supplemental complaint.—Id.

THE SAME.—Usually an assignee must allege and prove the assignment to sustain an action in his own name; but this rule does not apply to a case where an assignee of a cause of action, after the making up of the issues, is substituted as plaintiff, and the original plaintiff assents to the substitution.—Id.

ESTOPPEL IN CASE OF SUBSTITUTION.—A substitution of an assignee of a cause of action in place of plaintiff will ordinarily be granted, if the plaintiff consents; the original plaintiff in such case being ever afterwards estopped from denying the transfer.—Id.

POSITION OF SUBSTITUTED PLAINTIFF.—Under section sixteen of the Practice Act, where a person is substituted as plaintiff, he does not come in as a new party, as under the old chancery practice, but he takes the place of the original plaintiff, who ceases to be a party to the suit.—Id.

1080. SEC. 17. The Court may determine any controversy between parties before it, when it can be done without preju-

Controversy, when Court to determine.

dice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the Court shall order them to be brought in, and thereupon the party directed by the Court shall serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have ten days, or such time as the Court may order, after service, in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the Court may cause his default to be entered, and proceed as in other cases of default, or may make such other order as the condition of the action and justice shall require. (1)

(1) ORDERING OTHER NECESSARY PARTIES INTO COURT. If, in a judicial accounting between two of a larger number of tenants in common in a milling business, it be found that for a full adjustment of the account between such two the other tenants in common should be brought in, the Court may order them brought in.—Mitchell v. O'Neale, 4 Nev., p. 505.

TITLE II.

Of the place of trial of civil actions.

Where subject matter is situated.

1081. SEC. 18. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the Court to change the place of trial, as provided in this Act: First—For the recovery of real property, or of an estate, or interest therein, or for the determination in any form of such right or interest, and for injuries to real property. Second—For the partition of real property. Third—For the foreclosure of a mortgage of real property; *provided*, that where such real property is situated partly in one county and partly in another, the plaintiff may select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in the first, second, and third subdivisions of this section.

Where cause of action arose.

1082. SEC. 19. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the Court to change the place of trial: First—For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed. Second—Against a public officer, or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, does anything touching the duties of such officer.

1083. SEC. 20. In all other cases, the action shall be tried in the county in which the defendants, or any one of them, may reside at the commencement of the action; or, if none of the defendants reside in the State, or if residing in the State, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant, or defendants, may be about to depart from the State, such action may be tried in any county where either of the parties may reside or service be had, subject, however, to the power of the Court to change the place of trial, as provided in this Act. **Where parties reside.**

1084. SEC. 21. If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant before the time for answering transpire demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the Court, as is provided in this section. The Court may, on motion, change the place of trial in the following cases: First—When the county designated in the complaint is not the proper county. Second—When there is reason to believe that an impartial trial cannot be had therein. Third—When the convenience of witnesses and the ends of justice would be promoted by the change. Fourth—When from any cause the Judge is disqualified from acting in the action. When the place of trial is changed, all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by consent of the parties in writing duly filed, or by order of the Court; and the papers shall be filed, or transferred, accordingly. (1) **Changing place of trial.**

(1) An application for a change of venue to suit the convenience of witnesses should not be denied because the application was not made until after the answer was filed and the cause set for trial. Nor is it necessary that the answer should make any allusion to the facts on which such application is based.—Sheckles v. Sheckles, 3 Nev., p. 404.

The fact that the case had been set down for trial on a certain day should not interfere with an application for change of venue to suit the convenience of witnesses, unless there had been delay in making the application, or the parties had already prepared for the trial by subpœnaing witnesses, etc.

AFFIDAVIT TO CHANGE VENUE.—An affidavit to change the place of trial, on the ground of interest of the Judge, which merely states the belief of affiant, without stating any of the facts on which such belief is founded, or any person from whom he may have learned any facts regarding the matter, is too loose and uncertain, and is not sufficient.—Table Mountain Co. v. Waller's Defeat Co., 4 Nev., p. 218.

CHANGE OF VENUE DENIED ON PERSONAL KNOWLEDGE OF JUDGE.—Where a motion to change the place of trial was made on the ground that the Judge was interested, and the only proof was that he had said he was interested a year before the suit was instituted, and it appeared that he denied the motion on the ground of his own knowledge that he was not interested, the Supreme Court refused to disturb the order denying the change.—Id.

AFFIDAVIT FOR CHANGE OF VENUE.—An affidavit for change of venue that affiant "verily believes, and so says, that the convenience of witnesses and the ends of justice would be promoted by the change of the place of trial," etc., states mere conclusions, and not facts, and is clearly insufficient.—Kercheval and Julian v. McKenny, 4 Nev., p. 294.

CHANGE OF VENUE, WHAT.—To change the venue in a case is to direct the trial to be had in a different county from that where the venue is laid; but if a new county be created out of a portion of an old one, an Act directing suits relating to property in the new one to be tried in the new county is not an Act changing the venue of such suits.—Hooten v. McKinney, 5 Nev., p. 194.

Affidavits which do not show that a fair and impartial trial cannot be had in the county where an action is brought, are not sufficient, under the twenty-first section of the Practice Act, to entitle a party to a change of venue.—Hale and Norcross Co. v. Bajazette and Golden Era Co., 1 Nev., p. 322.

CONVENIENCE OF WITNESSES.—Where a suit to recover money was brought in Storey County against a resident of White Pine County, and defendant moved on the ground of his residence to change the place of trial to White Pine County: *Held*, that he had an absolute right, under the Practice Act, (Sec. 20), to change, and that counter affidavits to retain the case on account of the convenience of witnesses constituted no defense and could not be considered.—Williams v. Keller, 6 Nev., p. 141.

MOTION TO RETAIN PLACE OF TRIAL.—There cannot properly be any such practice as an affirmative motion to retain a cause for trial; everything usually called so is only matter of defense to a motion for a change.—Id.

CONTESTING DEFENSE NO WAIVER OF RIGHT TO CHANGE OF PLACE OF TRIAL.—Where a defendant in a proper case moves to change the place of trial to the county of his residence, he has an absolute right to such change; and the mere fact that he files counter affidavits and contests an effort to retain the cause on the ground of convenience of witnesses, will not amount to any waiver of his right.—Id.

WAIVER NOT PRESUMED EXCEPT IN CLEAR CASE.—The legal presumption of a waiver of any right by a litigant will not be drawn except in a clear case, and especially not when to allow such a presumption would be to deprive a party of his day in Court.—Id.

EFFECT OF MOTION TO CHANGE PLACE OF TRIAL FOR RESIDENCE.—Where a defendant in a proper case moves to change the place of trial to the county of his residence, the Court is by force of his motion ousted of all jurisdiction in the cause, except to decide upon the proposition of his residence at the time of the commencement of the action, and to transfer the case.—Id.

DISCRETION AS TO CHANGE OF PLACE OF TRIAL.—As a general rule, the matter of change of place of trial is within the discretion of the Court; but when the motion to change is made on the ground of the residence of defendant (Practice Act, Sec. 20), there is no room for the exercise of discretion.—Id.

DEFENDANT'S RIGHT OF TRIAL AT HIS RESIDENCE.—A defendant who comes within the purview of section twenty of the Practice Act is entitled, as a matter of right, to have an action against him tried in the county of his residence; the statute is peremptory.—Id.

TRANSFER OF ACTION BY STIPULATION.—Where a cause was transferred from one judicial district to another on a stipulation, which provided that if a trial should not be had in the new district by a certain time, the cause should be transferred back to the original district, and it was so transferred back: *Held*, no error.—Lyon County v. Washoe County, 6 Nev., p. 241.

TITLE III.

Of the manner of commencing civil actions.

1085. SEC. 22. Civil action in the District Courts shall be commenced by the filing of a complaint with the Clerk of the Court, and the issuance of a summons thereon; *provided*, that after the filing of the complaint a defendant in the action may appear, answer, or demur, whether the summons has been issued or not, and such appearance, answer, or demurrer, shall be deemed a waiver of summons. Civil actions, how commenced in the District Court.

1086. SEC. 23. The Clerk shall indorse on the complaint the day, month, and year the same is filed, and at any time within one year after the filing of the same the plaintiff may cause to be issued a summons thereon. The summons shall be issued and signed by the attorney of the plaintiff, or by the Clerk, and when issued by the Clerk shall be issued under the seal of the Court. Complaint, how indorsed.

1087. SEC. 24. The summons shall state the parties to the action, the Court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of summons, exclusive of the day of service; or that judgment by default will be taken against him, according to the prayer of the complaint; briefly stating the sum of money or other relief demanded in the complaint. The names of the plaintiff's attorneys shall be indorsed upon the summons. Form of summons.

1088. SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First—If the defendant is served within the county in which the action is brought, ten days. Second—If the defend- Answer, when to be made.

ant is served out of the county, but in the district in which the action is brought, twenty days. Third—In all other cases, forty days.

Notice, to be inserted in summons.

1089. SEC. 26. There shall also be inserted in the summons a notice in substance as follows: First—In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint. Second—In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded therein.

Notice, in action affecting real property.

1090. SEC. 27. In an action for the foreclosure of a mortgage upon real property, or affecting the title or possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the Recorder of the county in which the property, or some part thereof, is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby, and the defendant may also in such notice, state the nature and extent of the relief claimed in the answer. From the time of filing, only, shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby; and in case of the foreclosure of such mortgage all purchasers or incumbrancers, by unrecorded deed or other instrument in writing made prior to the filing of such notice, and subsequent to the date of such mortgage, shall be deemed and held purchasers or incumbrancers subsequent to the filing of such notice, and subject thereto, unless they can show that at the time of filing the notice the plaintiff had actual notice of such purchase or incumbrance. (1)

(1) SUITS AS NOTICE TO PERSONS NOT PARTIES.—Where the holder of a junior lien against real estate commenced suit and sold it under his decree, and afterwards—but before the execution of a Sheriff's deed—the holder of a senior lien commenced suit, without making the purchaser at the first sale a party: *Held*, that the second suit did not affect the right of the purchaser under the first suit to the legal title, and that the doctrine of *lis pendens*, so far as it applied at all, was in his favor.—Smith et al., Claimants, 4 Nev., p. 254.

Summons, by whom served.

1091. SEC. 28. The summons shall be served by the Sheriff of the county where the defendant is found, or by his deputy, or by any citizen of the United States over twenty-one years of age; and, except as hereinafter provided, a copy of the complaint, certified by the Clerk or the plaintiff's attorney, shall be served with the summons. The summons shall be served by the Sheriff or his deputy; it shall be returned with the certificate or affidavit of the officer, of its service, and of the service of the copy of the complaint, to the office of the Clerk of the county in which the action is commenced. When the summons is served by any other person, as before provided, it shall be returned to the office of the Clerk of the county in which the action is commenced, with the affidavit of such person of its service, and of the service of a copy of the complaint. If there be more than one defendant to the action residing within the county in which the action is brought, a copy of the complaint need be served only on one of such defendants.

How served.

1092. SEC. 29. The summons shall be served by delivering a copy thereof, attached to the certified copy of the complaint, as follows: First—If the suit be against a domestic corporation, organized under the laws of this State, to the President or other head of the corporation, Secretary, cashier, or managing agent thereof. Second—If the suit be against a foreign corporation or a non-resident joint stock company or association, doing business within this State, to an agent, cashier, or Secretary, President or other head thereof; *provided*, that if the suit be against a corporation organized under the laws of the State of California, in addition to such personal service, a copy of the summons, attached to a certified copy of the complaint, shall be deposited in the Post Office, addressed to the President and trustees of said corporation, at their place of business in the State of California, if the same is known, or can by due diligence be ascertained; and, *provided further*, that when such California company has no President or other head, Secretary, cashier, or managing agent, upon whom service of summons can be had, the Court before which such action has been brought, or the Judge thereof, may, upon the affidavit of the plaintiff, showing the existence of the foregoing facts, make an order for the service on the defendant of a copy of the summons and complaint in the action. Such service may be made by some competent person appointed by the Court or the Judge thereof, or by the Sheriff of the county, within the State of California, within which the principal place of business of such corporation may be located. Such service may be made personally, within said State of California, by said Sheriff or other person appointed by the Court or Judge, and shall be made in the same manner as required by law for the personal service of summons within this State. The service shall be upon the President or other head, Secretary, cashier, or managing agent of such corporation, and when proved to the satisfaction of the Court, by the sworn return of said Sheriff or other person so appointed, shall be for all purposes as valid and effectual as if made by a competent officer within this State; and in case such corporation shall not appear in the action within forty days after such service, its default and judgment thereon may be entered as in other cases. Third—If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or, if there be none within the State, then to any person having the care and control of such minor, or with whom he resides, or in whose service he is employed. Fourth—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian. Fifth—In all other cases, to the defendant personally.

Service by publication

J. C. (*)

1093. SEC. 30. (1) When the person on whom the service is to be made resides out of the State, or has departed from the State, or cannot, after due diligence, be found within the State, or conceals himself to avoid the service of summons, or being a corporation, or joint stock association, cannot be served as provided in section twenty-nine, and the fact shall appear by affidavit to the satisfaction of the Court or a Judge thereof, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such Court or Judge may grant an order that the service be made by the publication of the summons. (a)

(a) Secs. 30 to 35, inclusive, made applicable to Justices' Courts by Sec. 1580, post.

(*) Those sections marked "J. C." are made applicable to Justices' Courts.

(1) NO PRESUMPTION IN FAVOR OF JURISDICTION OF JUSTICES OF THE PEACE.—Nothing can be presumed in favor of the jurisdiction of a Justice of the Peace, but each step towards its acquirement must be affirmatively shown.—Little v. Currie, 5 Nev., p. 90.

AFFIDAVIT FOR PUBLICATION OF SUMMONS.—To obtain a legal service by publication of a summons against a non-resident, it must appear by affidavit, not only that the defendant is a non-resident, but also that a cause of action exists against him; and a judgment procured in such a case before a Justice of the Peace, when the latter fact does not appear by affidavit, is void.—Id.

ORDER FOR PUBLICATION OF SUMMONS.—An order for publication of summons, which fails to state any fact upon which it is founded, is fatally defective.—Id.

ORDER FOR PUBLICATION BEFORE ISSUANCE OF SUMMONS PREMATURE.—Where an order, made by a Justice of the Peace upon the filing of an affidavit for publication of summons, directed that "summons be issued in this case as above entitled and be published," etc.: *Held*, that the direction for a summons to issue was not the office of such an order, and that if the summons did not already exist the order was premature.—Id.

STATUTORY PROVISIONS FOR OTHER THAN PERSONAL SERVICE.—Statutory provisions for acquiring jurisdiction over a defendant by any other than personal service must be strictly pursued.—Id.

JUDGMENT VOID FOR WANT OF JURISDICTION.—A judgment by a Justice of the Peace against a non-resident, where the affidavit or order of publication is insufficient and there is no personal service nor any appearance, is absolutely void.—Id.

SERVICE OF SUMMONS IN COUNTY WHERE BEFORE SERVED OUT OF COUNTY.—Where there were two defendants in an action, and both were served with a summons in a district different from the one in which the suit was commenced, and before the forty days allowed to answer expired, one of the defendants entered the county and was served there; and after ten days from such service, but before the expiration of the forty days, default was entered against the person so served in the county, and judgment by default rendered against defendants, to be executed against their joint property and the separate property of the defendant served in the county: *Held*, that the second service was a nullity, the default irregular, and the judgment error.—Mayenbaum v. Murphy, 5 Nev., p. 383.

SUMMONS ONCE FULLY SERVED.—Where service of a summons has been made, and the demands of the writ satisfied, the conclusive presumption of the law is, under Secs. 28 and 33 of the Practice Act, that its office, having been accomplished, no person can effectively thereafter use it for its original purpose.—Id.

SECOND SERVICE OF SAME SUMMONS.—When a summons has been served upon a defendant out of the district, and afterwards served upon him in the district, with the intention of shortening the time allowed him to answer: *Held*, that the second service was an absolute nullity.—Id.

SERVICE OF SUMMONS UPON CALIFORNIA COMPANY.—Service of summons upon a California corporation, made in accordance with Sec. 29 of the Practice Act, is valid.—Caples v. C. P. R. R. Co., 6 Nev., p. 265.

SERVICE OF SUMMONS AFTER INSUFFICIENT ATTEMPTED SERVICE.—Where an attempted service of summons upon a California corporation was made in this State, and a subsequent service in California, under the provisions of Sec. 29 of the Practice Act: *Held*, that it made no difference whether an order refusing to quash the first service was correct or not, it appearing that the second service was good, and no prejudice done.—Id.

1094. SEC. 31. The order shall direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; *provided*, that a publication against a defendant being or residing either in the States of California or Oregon, or Territories of Utah or Washington, shall not be less than one month; and against a defendant residing out of the State, or absent therefrom, and not being or residing in either the States of California or Oregon, or in the Territories of Utah or Washington, shall not be less than three months. In case of publication, where the residence of a non-resident or absent defendant is known, the Court or Judge shall also direct a copy of the summons and complaint to be deposited in the Post Office, directed to the person to be served at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the State shall be equivalent to publication and deposit in the Post Office. The service of summons shall be deemed complete when personally made, whether in or out of the State, and in cases of publication at the expiration of the time prescribed in the order; *provided*, that when the order directs a Same. J. C.

copy of the complaint and summons to be deposited in the Post Office, the service shall not be complete until the expiration of the time prescribed for publication after such deposit. In actions upon contracts for the direct payment of money, the Court in its discretion may, instead of ordering publication, or may after publication, appoint an attorney to appear for the non-resident, absent, or concealed defendant, and conduct the proceedings on his part.

Proceedings, where service is made only on some of several defendants.

J. C.

1095. SEC. 32. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First—If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the Court otherwise directed; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendant served; or, second, if the action be against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants. (1)

(1) ACTION AGAINST JOINT DEBTORS, WHERE ONE ONLY SERVED.—Where an action was commenced against two persons, alleged to be partners, for a debt alleged to be a partnership debt, and one of them only was served, who appeared and filed an answer admitting all the allegations of the complaint; and the Court found in favor of the plaintiff, and rendered judgment against both parties, to be enforced against the joint property of both, and the separate property of the defendant served: *Held*, that the proceeding and judgment were authorized by and in strict accordance with section thirty-two of the Practice Act.—Flannery v. Anderson, 4 Nev., p. 437.

PLEADING BY ONE OF SEVERAL JOINT DEBTORS.—Section thirty-two of the Practice Act does not require, nor does it seem to authorize, one of several joint debtors, upon whom only service is made, to appear or answer for his codefendants who are not served; but service upon any one alone is sufficient to warrant a judgment against the joint property.—Id.

JUDGMENT BY CONFESSION OF JOINT DEBTOR.—A judgment by confession of one joint debtor will not reach the joint property, but be effective only against him who authorizes its entry, for the reason that the statute (Practice Act, Sec. 32), does not authorize such a judgment by confession.—Id.

CONSTRUCTION OF SECTION THIRTY-TWO OF PRACTICE ACT.—Section thirty-two of the Practice Act does not provide a rule for the disposition of actions against several joint debtors, where all have been served and appeared, and the proceedings against one are suspended by bankruptcy.—Tinkum v. O'Neale, 5 Nev., p. 93.

"Copartnership property and assets" is joint property, within the meaning of that term as used in section thirty-two of the Civil Practice Act.—Whitmore v. Shiverick, 3 Nev., p. 288.

UPON REHEARING.—The object of section thirty-two of the

Practice Act was to make the property of all partnership associations and joint associations liable on judgments obtained upon service of one member of the association.—Id.

Under the provisions of section thirty-two, one partner who is served must answer for all the partners or joint debtors who are sued, so far as the partnership or joint property is concerned.—Id.

PRACTICE ACT, SECTION THIRTY-TWO—JUDGMENT AGAINST JOINT DEBTORS.—Where the defendants in an action against two are both served with the summons, a judgment, under section thirty-two of the Practice Act, cannot be entered against one to be executed against his separate property and the joint property of both.—Mayenbaum v. Murphy, 5 Nev., p. 383.

PROCEEDINGS AGAINST JOINT DEBTORS WHERE ONE BANKRUPT.—In a suit against joint debtors, where one set up his co-defendant's adjudication in bankruptcy, and, during a stay of proceedings until final adjudication, admitted the allegations of the complaint; and where after final adjudication plaintiff amended, set up the discharge in bankruptcy, dismissed as to the bankrupt, and on default of the other defendant, took judgment against him: *Held*, that although the proceedings in allowing the amendment were unnecessary and somewhat irregular, there was no injury to defendant and no error in the judgment.—Dorn v. O'Neale, 6 Nev., p. 155.

BANKRUPT PLEADING DISCHARGE PRESUMED TO INSIST ON DISCHARGE.—Where, in a suit against joint debtors one pleaded his discharge in bankruptcy subsequent to the commencement of the suit, and the plaintiff thereupon amended his complaint, set up such discharge, dismissed as to the bankrupt, and on default of the other defendant, took judgment against him; and it was objected on appeal that plaintiff had no right to assume that the bankrupt would insist on his discharge: *Held*, that plaintiff had the right to so assume and to waive proof of the fact of discharge by his amendment, and that it was no error under the circumstances to take a separate instead of a joint judgment.—Id.

ADMISSION OF ADVERSE ALLEGATIONS—RIGHTS OF PARTIES NOT ADMITTING.—A party to the record may admit any adverse allegation and thus dispense with proof of it; though if the admission of it be not of a conceded fact, any other party, other than the one originally making the allegation, may make proof in opposition.—Id.

Proof of service.

1096. SEC. 33. Proof of the service of the summons shall be as follows: First—If served by the Sheriff or his deputy, the affidavit or certificate of such Sheriff or deputy; or, second, if by any other person, his affidavit thereof; or, third, in case of publication, the affidavit of the publisher, his foreman or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the Post Office, if the same shall have been deposited; or, fourth, the written admission of the defendant.

J. C.

Same. J. C. 1097. SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of the service.

Jurisdiction. J.C. 1098. SEC. 35. From the time of the service of the summons in a civil action, the Court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

TITLE IV.

Of the pleadings in civil actions.

Pleadings. 1099. SEC. 36. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.

Forms and rules. 1100. SEC. 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this Act.

By plaintiff and defendant. 1101. SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint, or demurrer to the defendant's answer; and the only pleadings on the part of the defendant shall be the demurrer, or the answer. The demurrer or answer of the defendant, and the demurrer of the plaintiff, shall be filed with the Clerk, and a copy served on the adverse party, or his attorney.

Complaint, what to contain. 1102. SEC. 39. The complaint shall contain: First—The title of the action, specifying the name of the Court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant. Second—A statement of the facts constituting the cause of action, in ordinary and concise language. Third—A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof shall be stated. (1)

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(1) The violation of a contract in which a penalty for breach is inserted, does not necessarily authorize the recovery of such penalty.—Richardson v. Jones & Denton, 1 Nev., p. 405.

In an action upon such an instrument, the plaintiff should not only prove the contract and the breach by defendant, but in addition thereto it is necessary to establish actual damages resulting from such breach, or he can only recover a mere nominal sum.—Id.

In such case an allegation of actual damage, or the statement of facts from which it must be inferred, is indispensably necessary to the sufficiency of a complaint where more than mere nominal damages were claimed.—Id.

Where the terms and conditions of an agreement are set out in a complaint, and the violation of that agreement is charged against the defendant, if it is such an instrument as the law requires to be in writing, and the complaint is silent as to whether it was oral or written, Courts will presume it to be a lawful or written agreement until the contrary is shown.—Van Doren v. Tjader & Winters, 1 Nev., p. 380.

In an action for damages for improperly suing out a writ of attachment, it is necessary to aver the attachment was sued out "without probable cause."—Levy v. Fargo, 1 Nev., p. 415.

If such averment is omitted in the complaint, but words of similar import are employed in lieu thereof, a verdict will cure the defective complaint, even if it was such a one as should not have been sustained on demurrer.—Id.

In an action for maliciously suing out the writ of attachment, it is necessary to show not only a want of probable cause but also malice in suing out the writ. It is not sufficient to show malice in *prosecuting* the writ if there was none in suing it out.—Id.

If the writ is sued out by an agent maliciously on his part and without probable cause, he is liable, and not the principal.—Id.

If the principal maliciously continues the prosecution after he is informed of the fact that the writ was sued out without probable cause, he will be liable to a special action for the damages which accrue after this knowledge is obtained. But the complaint must state these facts correctly.—Id.

Proof that the attachment was sued out not by the defendant but by his agent, would, prima facie, be a good defense, but that might be rebutted by proving that the agent acted under the express direction of his principal.—Id.

In an action to recover money loaned, if the complaint charges the indebtedness, the manner in which it accrued, the promise to pay and the refusal, it is sufficient.—Williams v. Alasco, 1 Nev., p. 533.

If an appellate Court finds in the investigation of a case that the facts stated in the complaint, with all legal intendments in its favor, will not support the judgment, the Court can do no less than reverse such judgment, although counsel may not have hit on the proper grounds for asking a reversal.—Van Doren v. Tjader & Winters, 1 Nev., p. 380.

The plaintiff in an action against the maker of a promissory note, may show that the note sued on is in the possession of defendant, although that fact is not alleged in the complaint. McClusky v. Gerhauser, 2 Nev., p. 47.

If the plaintiff is the owner of a promissory note, he has a right of action, notwithstanding the defendant may be in possession thereof.—Id.

The plaintiff's want of possession changes the character of the proof to be introduced, but not the character of the pleadings.—Id.

A party need not plead the loss of an instrument to be allowed to introduce secondary evidence of its contents. It is only necessary to prove such loss on trial.—Id.

The rule of pleading is different where a negotiable note, properly indorsed, is lost. There it has been held the owner of the lost note must of necessity resort to a Court of chancery, because an innocent party coming into possession of the note in regular course of business, would be in a condition to maintain an action at law, rather than the one who lost it. If resort is had to a Court of chancery, the facts giving chancery jurisdiction must be stated.—Id.

When a note sued on is in possession of defendant, the remedy is at law.—Id.

In a complaint for money expended and services performed, it is best always to use technical words, the meaning of which have long been established, rather than phrases of doubtful import. The complaint should state the money was expended *for the use and benefit* of defendant, and at his *instance* and *request.* So in regard to the performance of labor.—Huguet v. Owen, 1 Nev., p. 464.

The allegation that the defendant became indebted to plaintiff is simply a statement of a conclusion of law; the facts out of which the indebtedness arose should be stated.—Cal. State Telegraph Co. v. Patterson, 1 Nev., p. 150.

The pleading in this case is good as an action upon contract. Per BEATTY, C. J.—Prescott & Booth v. Wells, Fargo & Co., 3 Nev., p. 82.

The breach in this case is not exactly in the language of the contract, but seems to be substantially correct. That breach is not denied in the answer.—Id.

There was no necessity of alleging the value of the fixtures. The plaintiffs only had to allege the extent of the damage they sustained in consequence of not being permitted to remove the same.—Id.

An express promise to pay a certain sum of money as damages for a tort previously committed would create a contract upon which an action might be maintained; but the law does not presume a promise to pay from the tort itself.—Knickerbocker v. The Nevada Min. Co., 3 Nev., p. 194.

It is as necessary, under our system of practice, to maintain in pleadings the distinction between actions arising out of torts and those growing out of contracts, as it was under the old practice.—Id.

If the pleadings be upon contract, a recovery should not be allowed if the proof be of a trespass, from which there could be no presumption of a contract.—Id.

When A. contracts to deliver to B., at his steam-mills, all the wood necessary to run them for a definite time, and C. guarantees the payment for the wood thus delivered, in an action against C., the guarantor, it is not sufficient to allege that wood of a certain value was delivered to B., but it must also be alleged that the quantity delivered was used or needed to run the mills; for this is the extent of the guarantor's liability.—Horton v. Ruhling & Co., 3 Nev., p. 498.

When upon the trial of a cause in the Court below it appears that the plaintiff's complaint is so defective as not to state a cause of action, that Court should either grant leave to plaintiff to amend his complaint, or dismiss the action without prejudice. If the judgment in such case should be on the merits, upon the bringing of a new action embarrassing questions might arise as to how far the former judgment would be available as a plea in bar.—Id.

New matter in avoidance of a prima facie case made out by plaintiff should be specially pleaded, and no proof of such facts can be heard unless specially pleaded.—Id.

In pleading the judgment or other determination of a Court of limited jurisdiction, it is made necessary by the Practice Act of this State to allege that such judgment or determination was duly given or made.—Keys v. Grannis, 3 Nev., p. 548.

Without such allegation in the pleading, proof of the judgment or proceedings of such Court would be inadmissible.

To file an answer to a complaint and then move for judgment on the pleadings is an irregular practice, and ought not to be encouraged.—Lake Bigler Road Co. v. Bedford, 3 Nev., p. 399.

If the complaint is defective the proper mode to reach it is by demurrer; then, if the defect be amendable, the plaintiff has, as he ought to have, the opportunity to amend.—Id.

If, however, the complaint is fatally defective in not stating a cause of action, such a judgment must be sustained.—Id.

A bill to quiet title will not be sustained in favor of a party not in possession. So, too, a complaint for the recovery of possession of property will not be sustained where it shows on its face the pendency of another proceeding for the same purpose—Id.

A complaint setting out a note in full, and alleging the execution and delivery to, and ownership thereof, by plaintiff, and that there is "due, owing, and payable a certain sum," is a good complaint, though it does not, in direct terms, allege the nonpayment of the note.—Howard v. Richards, 2 Nev., p. 128.

When the statute makes an instrument void or invalid it is proper to plead the statute specially.—Maynard v. Johnson, 2 Nev., p. 16.

At common law, a party could not plead his own fraud or violation of law as a defense to an action. But when the statute declares certain instruments shall be void, a defendant may plead the facts which make it void, although in so doing he shows a violation of law by himself; it being the policy of the law to allow such pleas to prevent the violation of the statute. Id.

The defendant might plead the want of the proper stamps, if such deficiency of stamps rendered the notes invalid.—Id.

SUFFICIENCY OF COMPLAINT.—Where plaintiff, in an action to have defendant declared his trustee as to certain lots in Carson City, set forth that he had purchased the same at a Sheriff's sale upon foreclosure of a mortgage, had procured a

Sheriff's deed, and was the owner thereof; and that between the dates of his purchase and Sheriff's deed the defendant, colluding with the mortgagor and fraudulently representing himself as the true owner, had prevented a conveyance of the legal title from the trustee of the town site: *Held*, that the complaint was utterly defective in not setting out that the mortgagor, whose interests he had purchased, would have been entitled to a conveyance of the legal title.—Gentry v. Low, 4 Nev., p. 99.

LEGAL TITLE OF LAND IN TRUST.—To hold one who has obtained the legal title of land as a trustee for another, who claims to be the owner, as being substituted to the rights of a third person, it is necessary to set forth and show that such third person was the owner.—Id.

SUFFICIENCY OF COMPLAINT.—Where a complaint for work, labor, and services alleged an indebtedness in a sum certain therefor, but omitted to allege specifically the value of the same or promise to pay; and defendant, without demurring, put in an answer denying indebtedness, admitting services performed, and setting up payment in full, and there was verdict for plaintiff: *Held*, that whatever the defects of the complaint, they were cured by defendant's pleading and by the verdict.—McManus v. The Ophir Co., 4 Nev., p. 15.

WAIVER OF FORMAL OBJECTIONS.—All mere formal objections to a complaint are waived by a plea of confession and avoidance.—Id.

CURED BY VERDICT.—If the issue joined be such as necessarily to require on the trial proof of a fact defectively or imperfectly stated, without which it is not to be presumed the Judge would direct the jury to give, or the jury would have given the verdict, such defect or imperfection is cured by the verdict.—Id.

SUIT ON ORIGINAL CONSIDERATION OF VOID NOTE—PLEADINGS.—Though the holder of a promissory note, which proves to be void, may, in a proper case, recover on the consideration for which the note was intended to be given, he cannot do so unless the pleadings set out such consideration.—Wayman v. Torreyson, 4 Nev., p. 124.

PRACTICE—RIGHT TO HAVE AN ACCOUNTING.—Where a plaintiff alleged a partnership between himself and the defendant, and prayed for an accounting on the ground of such partnership, and the defendant answered denying such partnership, but admitting that he and plaintiff were interested as tenants in common in certain milling business, and that as to that, there having never been a settlement, he was willing and desirous that an accounting should take place; and on the trial it was found that no partnership existed, and the complaint was thereupon dismissed: *Held*, that the plaintiff, under the pleadings, was entitled to an accounting as to the milling business, and that, so far as that was concerned, it was error to dismiss the bill.—Mitchell v. O'Neal, 4 Nev., p. 504.

PLEADING ON INSURANCE POLICY.—If, in an action on an insurance policy, the claimant alleges generally a compliance with its terms and verifies his pleading, he will not be put to proof, unless in the answer particular breach is averred.—Healey v. Imperial Fire Insurance Co., 5 Nev., p. 268.

PLEADING—CHARACTER OF CORPORATIONS DEFENDANT. In an action on a note and mortgage, where a corporation was made a party defendant as having some interest: *Held*, that it was not necessary to allege whether it was a foreign or domestic corporation, nor for what purpose it was incorporated.—Crow v. Van Sickle, 6 Nev., p. 146.

PLEADING—HUSBAND'S OWNERSHIP OF COMMON PROPERTY.—In a complaint by a husband to recover a chose in action given in the name of his wife, but belonging to the community, it is sufficient for him, to show his right of action, to allege either that he is the owner or that it is common property; and even both allegations in the same complaint will not render it demurrable.—Id.

COMPLAINT BY HUSBAND ON NOTE GIVEN TO WIFE.—Where a complaint by a husband on a note and mortgage given to his wife alleged that he was the owner and holder of the note and mortgage, and in another part that the note and mortgage were the common property of himself and wife: *Held*, that though there was an apparent, there was no real contradiction; that the allegation of common property was nothing more than an explanation of the character of his ownership, and that a demurrer for ambiguity would not lie.—Id.

BODILY SUFFERING AS SOURCE OF DAMAGE.—Though it is difficult to conceive how bodily pain and suffering can be estimated in dollars and cents, yet it is well settled that a recovery can be had for them as damages, in actions against passenger carriers for personal injuries occasioned by negligence.—Johnson v. Wells, Fargo & Co., 6 Nev., p. 224.

PAIN OF MIND AS AN ELEMENT OF DAMAGE.—In an action against a passenger carrier for personal injuries, occasioned by the breaking down of a stage coach, it is error to instruct the jury in estimating damages to take into consideration plaintiff's "pain of mind," as distinct from his bodily suffering.—Id.

COMPENSATORY DISTINCT FROM PUNITIVE DAMAGES.—In actions against passenger carriers for personal injuries occasioned by their negligence, the rule of damages is based upon the idea of compensation, and not of punishment.—Id.

DAMAGES AGAINST PASSENGER CARRIERS FOR NEGLIGENCE STRICTLY COMPENSATORY.—The only damages that can be recovered in an action against a passenger carrier for personal injuries occasioned by negligence are strictly compensatory, including damages for bodily pain, and so much only of mental suffering as may be indivisibly connected therewith.—Id.

WATER RIGHTS—OBSTRUCTIONS HARMLESS WHEN ERECTED.—A dam erected on a stream in a manner in nowise injurious or prejudicial at the time of its erection to a mill above, but which, by reason of circumstances that could not have been anticipated, happening subsequently and operating in connection with it, causes the water to flow back upon the mill, is not such an obstruction as to authorize its abatement or justify a recovery of damages against the person building it.—Proctor v. Jennings, 6 Nev., p. 83.

RIGHTS OF SUBSEQUENT APPROPRIATORS OF WATER.—A person appropriating a water right on a stream already partly appropriated, acquires a right to the surplus or residuum he appropriates; and those who acquired prior rights, whether above or below him on the stream, can in no way change or extend their use of water to his prejudice, but are limited to the rights enjoyed by them when he secured his.—Id.

FORTUITOUS INJURIES TO WATER RIGHTS.—When a dam was erected on a stream below another's mill, so as not at the time to interfere with it, but subsequently, on account of a new process of mining going into operation on the stream above, extraordinary quantities of sediment were deposited, so as, with the dam, to interfere with the mill above: *Held*, that as the injuries resulting to the mill were not occasioned immediately by the dam, but by unforeseen and fortuitous circumstances happening afterward, though acting in connection with it, the owner of the dam was not responsible.—Id.

INTENDMENTS IN FAVOR OF COMPLAINT AFTER ORDER BASED UPON IT.—The rule that carries every legal intendment in favor of a complaint in case there has been a judgment thereon after issue joined, equally applies in case of an order, such as an injunction, made upon it after a full hearing.—Meadow Valley M. Co. v. Dodds, 6 Nev., p. 261.

SUFFICIENCY OF COMPLAINT FOR INJUNCTION TO STAY WASTE.—Where a complaint alleged that plaintiff was the owner and entitled to the possession of lands; that there were improvements thereon; that defendants were in possession and threatened to destroy, and would, if not enjoined, destroy such improvements, and that defendants were insolvent and unable to respond in damages: *Held*, sufficient to support an order enjoining defendants from removing the improvements or committing waste.—Id.

INTENDMENTS IN FAVOR OF COMPLAINT AFTER JUDGMENT.—After a verdict or decision in a District Court upon issue joined, the complaint will be supported by every legal intendment, if there be nothing material in the record to prevent it.—Id.

Demurrer. 1103. SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either: First, that the Court has no jurisdiction of the person of the defendant, or the subject of the action; or, second, that the plaintiff has not legal capacity to sue; or, third, that there is another action pending between the same parties for the same cause; or, fourth, there is a defect or misjoinder of parties, plaintiff or defendant; or, fifth, that several causes of action have been improperly united; or, sixth, that the complaint does not state facts sufficient to constitute a cause of action; or, seventh, that the complaint is ambiguous, unintelligible, or uncertain. (1)

(1) The proper practice when a demurrer is overruled is to give time to re-plead.—Easterbrook v. Upton, 1 Nev., p. 398.

Where a demurrer is interposed to such a complaint upon the general ground that it does not state facts sufficient to constitute a cause of action, goes on to point out the particulars in which the complaint is defective, but does not show the real defect, this Court will not hold it was error to overrule the demurrer if the defendant chooses to answer instead of standing on his demurrer. This Court will treat the case as if the party had answered without any demurrer.—Levy v. Fargo, 1 Nev., p. 415.

When an answer is put in, defective only in form, plaintiff should demur, and not move for judgment on the pleadings. He cannot, by moving for judgment on the pleadings, deprive defendant of the right to amend.—Gallagher v. Dunlap, 2 Nev., p. 226.

PLEADING—DEMURRER INSTEAD OF PLEA IN ABATEMENT.—In a suit for damages occasioned by floating timber down a river, a defense that the action should not be maintained for the reason that defendants were authorized to float such timber by a general law of the State, which provided that all damages occasioned thereby should be determined by appraisers to be appointed, and that no such appraisers had been appointed or applied for, should be taken by demurrer, and not in the way of a plea in abatement.—Mandelbaum v. Russell and Crow, 4 Nev., p. 551.

PARTNERSHIP CONTRACTS JOINT.—Partnership obligations are joint in their nature, at least to the extent that one partner may always take advantage of the nonjoiner of his copartner in an action on a partnership contract.—Tincum v. O'Neale, 5 Nev., p. 93.

PARTNERS CANNOT SUE IN PARTNERSHIP NAME.—The "proprietors of the Mexican Mill," a copartnership or unincorporated association, cannot prosecute an action under such copartnership or associate name.—Proprietors of Mexican Mill v. Yellow Jacket Co., 4 Nev., p. 40.

IF NO PLAINTIFF, NO ACTION.—An action cannot be maintained in a name as plaintiff, which is neither that of a natural person, nor of such an artificial person as is recognized by the law as capable of suing. A proceeding commenced in such a name, there being no plaintiff, is not an action, but a mere nullity, and may be dismissed at any time.—Id.

NO DEMURRER FOR WANT OF PLAINTIFF.—A demurrer for "defect of parties plaintiff," or "that plaintiff has not legal capacity to sue," will not reach the defect of a proceeding in a name, as plaintiff, of neither a natural nor artificial person.—Id.

DISMISSAL FOR WANT OF PLAINTIFF AT ANY TIME.—An objection that the proceeding is in the name, as plaintiff, of neither a natural nor artificial person, may be made for the first time in the Appellate Court.—Id.

IF NO PLAINTIFF, NO AMENDMENT.—A proceeding in a name, as plaintiff, of neither a natural nor artificial person, is so vitally defective as to be beyond the reach of an amendment; there being no plaintiff, there is no action and nothing to amend.—Id.

PARTIES PLAINTIFF IN SUIT ON REPLEVIN BOND—DEMURRER FOR MISJOINDER.—An action on an undertaking given to the Sheriff upon the return of property replevied (Practice Act, Sec. 104), should be brought in the name of the real party in interest; and where the name of the Sheriff was joined with his as plaintiff: *Held*, that the complaint was clearly demurrable for misjoinder of parties plaintiff.—McBeth v. Van Sickle, 6 Nev., p. 134.

SHERIFF NOT INTERESTED IN REPLEVIN BOND.—Though Sec. 104 of the Practice Act requires the undertaking given on return of property replevied to be delivered to the Sheriff, the officer has no interest in it, and is not a proper party plaintiff in a suit on it.—Id.

PERSONS WITHOUT INTEREST NOT TO BE PLAINTIFFS.—While the Practice Act, Sec. 12, declares that all persons having an interest in the subject of an action, and in obtaining the relief demanded, may be joined as plaintiffs, the converse of the proposition is also true, that none can be united who have not such interest.—Id.

Demurrer.

1104. SEC. 41. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so it may be disregarded.

Same.

1105. SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue; or may demur and answer at the same time.

Amending complaint.

1106. SEC. 43. If the complaint be amended, a copy of the amendment shall be filed, or the Court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendment shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the Court, and judgment by default may be entered upon failure to answer, as in other cases.

Objections.

1107. SEC. 44. When any of the matters enumerated in section forty do not appear upon the face of the complaint, the objection may be taken by answer.

Waiver of objections.

1108. SEC. 45. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

1109. SEC. 46. The answer of the defendant shall contain: First—If the complaint be verified, a specific denial to each allegation of the complaint, controverted by the defendant, or a denial thereof according to his information and belief; if the complaint be not verified, then a general denial to each of such allegations; but a general denial shall only put in issue the material and express allegations of the complaint. Second—A statement of any new matter or counterclaim, constituting a defense, in ordinary and concise language. (1) **Answer, what to contain.**

(1) An answer palpably frivolous, or not verified when it should be, may be stricken out, on motion, and if, after a reasonable time given to perfect such answer, it is not done, judgment may be rendered in accordance with the prayer of the complaint.—Lehane v. Keyes, 2 Nev., p. 361.

PLEADING—ADMISSION OF VALUE OF GOODS.—In an action for the conversion of chattels, alleged by plaintiff to be of a certain value, defendant denied that they were of such value, or of any greater value than a certain less sum named: *Held*, that this was an admission that they were worth the less sum named.—Carlyon v. Lannan, 4 Nev., p. 156.

ADMISSION IN PLEADINGS DISPENSES WITH PROOF.—Where a fact is admitted by the pleadings there is no necessity of proof upon the point.—Id.

GENERAL DENIAL IN SWORN ANSWER INOPERATIVE.—A general denial in an answer which is required to be verified, is inoperative; the very object of putting a defendant on his oath being to have a specific answer on his conscience as to each separate allegation of the complaint.--Slate v. Western Union Telegraph Co., 4 Nev., p. 338.

PLEADING BY DEFENDANT ASKING AFFIRMATIVE RELIEF.—A defendant claiming affirmative relief must plead as fully as if he were a plaintiff.—Rose v. Treadway, 4 Nev., p. 455.

ANSWER INSTEAD OF PLEA IN ABATEMENT.—A defense on the ground of a defect of parties defendant should be made by answer, and not in the way of a plea in abatement.—Mandelbaum v. Russell & Crow, 4 Nev., p. 551.

An answer in which an officer attempts to justify a seizure under execution should not only set out the execution, but also the judgment on which the execution is founded, and show distinctly that defendant is an officer properly acting under such execution.—McDonald v. Prescott & Clark, 2 Nev., p. 109.

An officer may justify in some cases under an execution alone. But under other circumstances, as when the controversy is with a purchaser whose title is only defective for want of a delivery, the officer must show the judgment as well as the execution.—Id.

When a complaint charges a sale and delivery of goods, it is not sufficient for defendant, in his answer, to say he never "had or requested" any goods of plaintiff. There must be a direct and not argumentative denial of the sale and delivery.—Gallagher v. Dunlap, 2 Nev., p. 326.

PLEADING—AFFIRMATIVE MATTER IN ANSWER CONSIDERED DENIED.—Under the practice in this State, all affirmative matter in an answer is taken as denied.—Cahill v. Hirschman, 6 Nev., p. 57.

ESTOPPEL MUST BE PLEADED.—An estoppel cannot be proved if it be not sufficiently pleaded.—Sharon v. Minnock, 6 Nev., p. 377.

PLEADING OF ESTOPPEL IN PAIS.—In pleading facts to show an estoppel *in pais*, it is necessary to set forth every essential element of such an estoppel; and, among other things, that the party relying on it was influenced in his conduct by the acts or silence of the other.—Id.

ESTOPPEL IN PAIS.—To constitute an estoppel *in pais* it is essential among other things that the party relying on it should have been influenced by the acts or silence of the other, and been caused thereby to act as he would not otherwise have acted; else he cannot complain that he was deceived to his prejudice.—Id.

Counterclaim.

1110. SEC. 47. The counterclaim mentioned in the last section shall be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First—A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action. Second—In an action arising upon contract, any other cause of action arising also upon contract and existing at the commencement of the action.

Cross demands.

1111. SEC. 48. When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands be deemed compensation, so far as they equal each other.

Several defenses may be set up.

1112. SEC. 49. The defendant may set forth by answer as many defenses and counterclaims as he may have. They shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer in a manner in which they may be intelligibly distinguished.

Demurrer to answer.

1113. SEC. 50. The plaintiff may, within the number of days in which the defendant is by the summons required to answer, said days to be computed from the time of the service on the plaintiff of a copy of such answer, demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may also, within the same time, demur to one or more of the defenses set up in the answer. Sham and irrelevant answers and defenses, and so much of any answer as may be irrelevant, redundant, or immaterial may be stricken out on motion, and upon such terms as the Court, in its discretion, may impose.

1114. SEC. 51. Every pleading shall be subscribed by the party or his attorney, and when the complaint is verified by affidavit the answer shall be verified also, except as provided in the next section. **Pleadings, to be subscribed, etc.**

1115. SEC. 52. The verification of the answer required in the last section may be omitted when an admission of the truth of the complaint might subject the party to prosecution for felony. **Verification, when omitted.**

1116. SEC. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified. **Genuineness of written instrument admitted.**

1117. SEC. 54. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the Clerk, five days after the service of the answer, an affidavit denying the same. **Same.**

1118. SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorneys reside, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; or when the State, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts; except that in actions prosecuted by the Attorney General, in behalf of the State, the pleadings need not, in any case, be verified. (1) **Manner of verifying pleadings.**

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(1) Under our Practice Act, is it sufficient ground for allowing an attorney to verify an answer to show that defendant is a foreign corporation? Should it not also be shown that the corporation has no officer in the county where the answer is prepared?—Heintzelman v. L'Amoroux, 3 Nev., p. 377.

Even if the affidavit to an answer is insufficient, is not the objection waived by the opposite party accepting service of the answer, without objection to the sufficiency of the affidavit? Should not the answer in such case be returned with notice that it would not be accepted for want of a proper verification?—Id.

Where there is a defective verification of an answer, the defendant should be allowed to correct the error, if he desires to do so.—Id.

Items of account need not be set forth.

1119. SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party within five days after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The Court, or a Judge thereof, may order a further account when the one delivered is too general, or is defective in any particular.

Irrelevant matter.

1120. SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the Court, on motion of any person aggrieved thereby.

Recovery of real property.

1121. SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint, or with other equal certainty.

Judgment.

1122. SEC. 59. In pleading a judgment or other determination of a Court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Conditions precedent.

1123. SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

Private statutes.

1124. SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the Court shall thereupon take judicial notice thereof.

Libel or slander, in action for.

1125. SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

Truth may be alleged.

1126. SEC. 63. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of the damages; and, whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Several causes of action in one complaint.

1127. SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of: First, contracts, express or implied; or, second, claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or, third, claims to recover specific personal property, with or without damages for the withholding thereof; or, fourth, claims against a trustee, by virtue of a contract, or by operation of law; or, fifth, injuries to character; or, sixth, injuries to person; or, seventh, injuries to property. But the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; *provided, however,* that an action for malicious arrest and prosecution, or either of them, may be united with an action for either injury to character or to the person. (1)

(1) Misjoinder of actions cannot be taken advantage of on a general demurrer.—Ruhling v. Hackett, 1 Nev., p. 360.

1128. SEC. 65. Every material allegation of the complaint, when it is verified, not specifically controverted by the answer, shall for the purpose of the action be taken as true. The allegation of new matter in the answer shall on the trial be deemed controverted by the adverse party. Allegations, when taken as true.

1129. SEC. 66. A material allegation in a pleading is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient. Material allegations.

1130. SEC. 67. After demurrer, and before the trial of issue on demurrer, either party may, within ten days, amend any pleading demurred to of course, and without costs, filing the same as amended, and serving a copy thereof upon the adverse party or his attorney, who shall have ten days to answer or demur thereto if the pleading be a complaint, or to demur thereto if it be an answer; but a party shall not so amend more than once. When a demurrer to a complaint is overruled, and there is no answer filed, the Court may, upon such terms as shall be just, and upon payment of costs, allow the defendant to file an answer. If a demurrer to the answer be overruled, the facts alleged in the answer shall still be considered as denied. (2) Answer, after demurrer.

(2) AMENDMENT OF COMPLAINT.—That an amendment of a complaint will deprive the defendant of his right to plead the Statute of Limitations is no reason why such amendment should be refused.—Tucker v. Mayor, etc., of Virginia City, 4 Nev., p. 20.

AMENDMENT REDUCING CLAIM TO DAMAGES.—In a suit for damages for unlawful seizure and conversion of personal property, defendant cannot be prejudiced by an amendment which merely reduces the amount of damages claimed. It is no error to allow such an amendment just before trial.—Carlyon v. Lannan, 4 Nev., p. 156.

STATUTE OF LIMITATIONS.—Where plaintiff originally sued on a written contract, and afterwards amended his complaint by adding a second count on an implied contract for the same cause of action: *Held*, that such amendment could not be resisted on the ground that a new suit on such second count would then be barred by the Statute of Limitations; and that to strike out such second count on that ground was error.—Tucker v. Mayor and Aldermen of the City of Virginia, 4 Nev., p. 20.

PLEADING AND PROOF OF OWNERSHIP OF PROMISSORY NOTES.—In a suit by the payee on a promissory note, which appears to have been indorsed by him to a third person, the plaintiff's production thereof will raise the presumption that he is the owner without further proof; but if it should become necessary to prove a transfer back to himself he can do so without specially pleading it, any proof tending to establish his ownership, whether shown by oral evidence or indorsement on the instrument, being admissible to sustain the allegation of his being the owner and holder thereof.—Todman v. Purdy, 5 Nev., p. 238.

FACTS NOT REQUIRING PROOF REQUIRE NO PLEADING.—No fact is required to be pleaded which it is unnecessary to prove.—Id.

Although all forms of pleading are abolished, yet a party must prove the case he makes in his pleadings, or fail. A party who alleges a contract, and seeks to recover under that contract, cannot recover on proof of a trespass.—Carson River Lumbering Co. v. Bassett, 2 Nev., p. 249.

The fact that there was evidence tending to sustain the complaint of plaintiff, will not sustain the judgment under the instructions in this case, which assumed that plaintiff might recover on proving that which would amount to a trespass, whilst the action was exclusively on contract.—Id.

A complaint cannot be altered in a material part thereof without notice to defendant. Especially it cannot be so altered as to set out a new and distinct cause of action.—Keller v. Blasdel, 2 Nev., p. 162.

If, instead of demurring, advantage be taken of a defective pleading by motion for judgment, the Court should permit an amendment of the pleading where an amendment will cover the defect the same as if a demurrer had been interposed.—Cal. State Telegraph Co. v. Patterson, 1 Nev., p. 150.

Amendment of pleadings.

1131. SEC. 68. The Court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceedings by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, and may upon like terms enlarge the time for an answer or demurrer, or demurrer to an answer filed. The Court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may upon like terms allow an answer to be made after the time limited by this Act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, from any cause, the summons, and a copy of the complaint in an action, have not been personally served on the defendant, the Court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action. (1)

Time for answer.

(1) SECTION SIXTY-EIGHT OF PRACTICE ACT.—The punctuation after the words "excusable neglect," in the latter part of section sixty-eight of the Practice Act, as printed, is absurd; there should be a full stop after those words.—Howe v. Coldron, 4 Nev., p. 171.

OPENING DEFAULT.—Courts should be liberal in setting aside defaults, when it appears that the party defaulted has a good defense, and has been guilty only of carelessness and inattention, without willful or fraudulent delay.

AFFIDAVIT OF MERITS.—An affidavit of merits, which merely states that defendant has a good, legal, and meritorious defense, is certainly very positive, but not very satisfactory.—Id.

WHAT AFFIDAVITS OF MERITS SHOULD STATE.—An affidavit of merits which shows that affiant has fully and fairly stated the facts of the case to his counsel, and that such counsel has advised him that he has a good, legal, and meritorious defense, will ordinarily be sufficient, without setting forth the facts constituting the defense.—Id.

AFFIDAVITS OF MERITS BY ATTORNEY.—An affidavit of merits by the attorney in a cause, stating that in his opinion his client has a meritorious defense, will ordinarily be sufficient, if it appear that the attorney is familiar with the facts of the case.—Id.

PRACTICE AS TO OPENING DEFAULTS.—As a general rule, a defaulted party who has a good defense should, when prompt application is made, and all orders of the Court for indemnity to the opposite side complied with, be allowed to set it up, notwithstanding any negligence on the part of himself or counsel. But when the negligence has been so extreme as to cause suspicion of willful delay, the Court should require a full showing of the facts upon which the defense rests, and impose such proper terms as to costs, speedy trial, taking depositions, and security for judgment, as may, as far as possible, indemnify the plaintiff against the delay.—Id.

1132. SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding may be amended accordingly. **Plaintiff ignorant of defendant's name.**

1133. SEC. 70. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties. **Pleadings, how construed.**

1134. SEC. 71. The Court shall in every stage of an action disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect. (2) **Error, when to be disregarded.**

(2) CONSTRUCTION OF PLEADINGS.—Sections seventy and seventy-one of the Practice Act have liberalized the rules of construction applicable to pleadings so as not only to embrace

the whole of the English statutes of jeofails and amendments, but to go somewhat beyond.—McManus v. The Ophir Co., 4 Nev., p. 15.

Where a complaint in the nature of a bill in equity sets out distinctly most of the facts necessary to entitle the plaintiff to the relief sought, but omits one or two material allegations or facts, and these facts are clearly stated and admitted in the answer, the answer may be held to aid the complaint and sustain the action. This was so under the former chancery practice, and is more especially the case under the liberal rule prescribed by the seventy-first section of the Practice Act.—Hawthorne v. Smith, 3 Nev., p. 182.

TITLE V.

Of the provisional remedies in civil actions.

CHAPTER 1.—ARREST AND BAIL.

Arrest. 1135. SEC. 72. No person shall be arrested in a civil action except as prescribed by this Act.

When may be made. 1135†. SEC. 73. The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this Act: First—In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the State with intent to defraud his creditors, or when the action is for libel or slander. Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in professional employment, or for a willful violation of duty. Third—In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the Sheriff. Fourth—When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought. Fifth—When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for. How obtained. 1136. SEC. 74. An order for the arrest of the defendant shall be obtained from a Judge of the Court in which the action is brought.

1136†. SEC. 75. The order may be made whenever it shall appear to the Judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and the case is one of those mentioned in section seventy-three. The affidavit shall be either positive or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the Clerk of the Court.

Plaintiff to give undertaking.

1137. SEC. 76. Before making the order the Judge shall require a written undertaking, payable in gold coin of the United States, on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder or freeholder within the State, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the Clerk of the Court.

When order may be made.

Form.

1138. SEC. 77. The order may be made to accompany the summons, or any time afterwards before judgment. It shall require the Sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, naming the money or currency in which it is payable, and to return the order at a time therein mentioned to the Clerk of the Court in which the action is pending.

Order.

Duty of Sheriff.

1139. SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the Sheriff, who, upon arresting the defendant, shall deliver to him the copy of the affidavit, and also, if desired, a copy of the order of arrest.

How executed.

1140. SEC. 79. The Sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law.

Defendant, how discharged.

J. C.

1141. SEC. 80. The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount mentioned in the order of arrest in the money or currency therein named, as provided in this chapter.

Bail, how given.

J. C.

1142. SEC. 81. The defendant may give bail by causing a written undertaking, payable in the money of the contract (if any be named), and in other cases as directed by the Judge, to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself amenable to the process of the Court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender.

J. C.

1143. SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the Sheriff of the county where he was arrested.

May arrest defendant.

1144. SEC. 83. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him; or by a written authority, indorsed on a certified copy of the undertaking, may empower the Sheriff to do so. Upon the arrest of the defendant by the Sheriff, or upon his delivery to the Sheriff by the bail, or upon his own surrender, the bail shall be exonerated; *provided*, such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter. J. C.

Judgment against. 1145. SEC. 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment. J. C.

How exonerated. 1146. SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a State Prison, or by his legal discharge from the obligation to render himself amenable to the process. (a) J. C.

(a) Secs. 80 to 85, inclusive, made applicable to Justices' Courts by Sec. 1588, post.

Proceedings after arrest. 1147. SEC. 86. Within the time limited for that purpose, the Sheriff shall file the order of arrest in the office of the Clerk of the Court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the Sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the Sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the Clerk of the Court. J. C.

Notice of justification of bail. 1148. SEC. 87. Within five days after the receipt of notice, the Sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter), before the Judge of the Court, or Clerk, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Qualifications of bail. 1149. SEC. 88. The qualifications of bail shall be as follows: First—Each of them shall be a resident and householder, or freeholder, within the county. Second—Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the Judge, or Clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Bail, how to justify. 1150. SEC. 89. For the purpose of justification, each of the bail shall attend before the Judge, or Clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the Judge, or Clerk, in his discretion may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

1151. SEC. 90. If the Judge, or Clerk, find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the Sheriff shall thereupon be exonerated from liability. Allowance of bail.

1152. SEC. 91. The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the Sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody. Deposit, in lieu of bail.

1153. SEC. 92. The Sheriff shall immediately after the deposit pay the same into Court, and take from the Clerk receiving the same two certificates of such payment; the one of which he shall deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the Sheriff to collect the sum deposited as in other cases of delinquency. Disposition of deposits.

1154. SEC. 93. If money be deposited, as provided in the last two sections, bail may be given and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the Clerk, the money deposited shall be refunded by such Clerk to the defendant. Bail after deposit.

1155. SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of a recovery of a judgment in favor of the plaintiff, the Clerk shall, under the direction of the Court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the Clerk shall, under like direction of the Court, refund to him the whole sum deposited and remaining unapplied. Application of deposit after judgment.

1156. SEC. 95. If, after being arrested, the defendant escape or be rescued, the Sheriff shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail at any time before judgment. Liability of Sheriff.

1157. SEC. 96. If a judgment be recovered against the Sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency. Judgment against Sheriff.

1158. SEC. 97. A defendant arrested may, at any time before the justification of bail, apply to the Judge who made the order, or the Court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made. Vacating order of arrest.

Reduction of bail.

1159. SEC. 98. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated, or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER 2.—CLAIMS AND DELIVERY OF PERSONAL PROPERTY. (1)

When claim may be made.

J. C.

1160. SEC. 99. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter. (^{a})

(a) Secs. 99 to 102, inclusive, are made applicable to Justices' Courts by Sec. 1588, post.

(1) Where one tenant in common sells the right to a stranger to cut timber off of the common property, another tenant in common of the same property cannot maintain replevin for the timber after it has been cut.—Alford v. Bradlen, 1 Nev., p. 228.

The true measure of damages in an action of trover is the value of the article when converted, with interest on that value to the time of trial. Per BEATTY, J.—O'Meara v. North American Mining Co., 2 Nev., p. 112.

This rule should have this modification: if there is an actual conversion at one time not known to plaintiff, and he afterwards demands his property and is refused, he may treat this conversion as only having taken place when he demanded the property. Per BEATTY, J.—Id.

In this cause the prayer of the bill is for stock, and if that cannot be had, then an alternative decree for its value. In such a case the measure of damages is the value of the stock when the decree is rendered.—Id.

PER LEWIS, C. J.:

Ordinarily the measure of damages in trover is the value of the article when converted, together with interest thereon, subject, however, to some qualifications.—Id.

The market value at time of conversion, and interest, will not in all cases be compensation to the plaintiff.—Id.

The true rule seems to be, the value of the article when converted, together with such additional damages as shall cover not only every additional loss which the plaintiff has sustained, but any additional value which the wrongdoer has obtained, or has it in his power to obtain.—Id.

The highest market value between the conversion and trial is not the rule, unless it be shown that but for the conversion the plaintiff would have realized that price.—Id.

Where the proceeding is in equity to compel the delivery of stock, and the defendant is unable to deliver it, the alternative decree should be for the value of the stock at the time of the trial.—Id.

The defense here was equally good, whether the defendant had delivered, or was only bound to deliver, the stock to a third party. If another party was entitled to the stock, plaintiff could not be so entitled.—Id.

In an action of replevin, it is not indispensably necessary to show a demand upon the defendant to return the property before suit brought. A demand serves no purpose, except to establish a conversion or a wrongful detention. When that can be established without showing a demand, a demand is unnecessary. Justice JOHNSON dissenting.—Perkins v. Barnes, 3 Nev., p. 557.

When, therefore, the defendant, in his answer, admits the detention and claims title in himself, the title alone is put in issue, and no demand need be shown. Justice JOHNSON dissenting.—Id.

Perkins v. Barnes, 3 Nev., p. 557, approved, to the effect that a plaintiff in an action for the recovery of personal property makes out his case when he shows his right of possession and an unlawful detention; and that a demand need never be proved in such cases except to show the detention to be wrongful, and that when such fact can be proved in any other way no demand need be shown.—Whitman Mining Co. v. Tritle, 4 Nev., p. 494.

DAMAGES FOR CONVERSION OF PERSONAL PROPERTY.—If personal property is unlawfully seized and converted, the measure of damages is the value of the property at the time of conversion, and interest from that time to judgment.—Carlyon v. Lannan, 4 Nev., p. 156.

DEMAND—ITS PURPOSE IN TROVER AND REPLEVIN.—The only purpose of proving a demand in the actions of trover and replevin is to show the defendant's possession wrongful.—Whitman Mining Co. v. Tritle, 4 Nev., p. 494.

WHEN DEMAND FOR PERSONAL PROPERTY UNNECESSARY. Where the owner of personal property does not part with it voluntarily, but it is tortiously taken from his possession, or any act is done which makes the possession of the person having it wrongful, no demand is necessary to be shown to entitle the owner to a recovery of it.—Id.

DEMAND IN ACTION TO RECOVER VALUE OF PERSONAL PROPERTY.—If no demand be necessary in an action to recover certain specific personal property, no demand is necessary in an action brought to recover its value only.—Id.

ACTION FOR VALUE OF WOOD CUT AND SOLD BY TRESPASSERS.—Where trespassers cut wood on lands belonging to plaintiff, and sold it to defendants, who were bona fide purchasers: *Held*, that no previous demand was requisite to sustain an action for the recovery of the wood or its value.—Id.

RIGHT OF PRESENT POSSESSION TO MAINTAIN REPLEVIN. In an action for the recovery of specific personal property, it is necessary for the plaintiff to show that he is entitled to the immediate possession.—Hilgar v. Edwards, 5 Nev., p. 85.

DECLARATIONS OF POSSESSOR TO CONTRADICT ALLEGED GIFT OF PERSONAL PROPERTY.—Where in a replevin suit for a wagon and horses, alleged to be the property of the estate of a deceased person, but claimed by defendant as a gift executed by deceased in his lifetime, a witness testified that after the alleged gift he saw deceased in possession of the property, having the wagon repaired, and exercising other acts indicating ownership: *Held*, that the question, "Did the deceased tell you at that time that he was the owner of the property?" was not amenable to the objection that the evidence would be hearsay, and that to rule it out on that objection was error.—Rollins v. Strout, 6 Nev., p. 150.

DECLARATION OF PARTY AS PART OF RES GESTÆ.—Declarations made by a party to an action, if a part of the *res gestœ*, are admissible in evidence even in his own favor; but only such declarations as are a part of the *res gestœ*, such as accompany acts pertinent to the case, are so admissible.—Id.

DECLARATIONS EXPLAINING ACTS OR MOTIVES.—Where the proof of acts done by a person is admissible in evidence, any declarations accompanying and tending to explain such acts, or the motives controlling them, are likewise admissible as a part of the acts themselves; and this rule is not confined to such declarations as are against the interest of the party making them.—Id.

DECLARATIONS OF DECEASED PERSONS AS PART OF RES GESTÆ.—Where the issue was as to the fact of a gift having been made by plaintiff's testator and its consummation by delivery: *Held*, that acts of ownership exercised by deceased after the time of the alleged gift, and his declarations accompanying them, were part of the *res gestœ*, and admissible in evidence.—Id.

JUDGMENT IN REPLEVIN FOR UNITED STATES MARSHAL. In a replevin suit in a State Court against a Marshal for goods seized under a writ of attachment from a United States Court, there is jurisdiction (if the property has been taken from the Marshal) to render judgment in his favor for a return of the property or its value.—Feusier v. Lammon, 6 Nev., p. 209.

QUESTIONS INVOLVED ON REPLEVIN AGAINST A UNITED STATES MARSHAL.—Where a replevin suit was commenced in a State Court against a Marshal for goods seized by him under attachment process from a United States Court: *Held*, that the State Court could not extend its inquiry beyond the question as to whether the Federal process was valid; and if so, that the question of title to the goods was irrelevant.—Id.

REQUISITES OF VERDICT IN REPLEVIN.—Where, in replevin, it appeared that a portion of the property had been delivered to plaintiff, and defendant claimed a return, and there was a general verdict for plaintiff in a sum certain: *Held*, that the verdict was erroneous, for the reason that no such peculiar judgment or execution as are provided for by statute in such cases could be rendered or issued thereon.—Carson v. Applegrath, 6 Nev., p. 187.

REPLEVIN VERDICTS, JUDGMENTS, AND EXECUTIONS.—In a replevin case, where the property has not been delivered to plaintiff, a verdict and judgment in his favor are required by the statute (Practice Act, Secs. 179 and 202,) to be in the alternative, and so also is the execution.—Id.

Affidavit to obtain order for delivery.

1161. SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: First—That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second—That the property is wrongfully detained by the defendant. Third—The alleged cause of the detention thereof according to his best knowledge, information, and belief. Fourth—That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure; and, Fifth—The actual value of the property. J. C.

Delivery.

1162. SEC. 101. The plaintiff or his attorney may thereupon, by indorsement in writing upon the affidavit, require the Sheriff of the county where the property claimed may be, to take the same from the defendant. J.C.

Proceedings on.

1163. SEC. 102. Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the Sheriff, to the effect that they are bound to the defendant in double the value of the property, in gold coin of the United States, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, in gold coin of the United States, the Sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest Post Office, directed to the defendant. J.C.

Sureties excepted to.

1164. SEC. 103. The defendant may, within two days after the service of a copy of the affidavit and the undertaking, give notice to the Sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the Sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Defendant may require return.

J.C.

1165. SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, in gold coin of the United States, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum, in gold coin of the United States, as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine. ([a])

Justification of defendant's sureties.

1166. SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, shall justify before the Judge or the Clerk in the same manner as upon bail on arrest; and, upon such justification, the Sheriff shall deliver the property to the defendant. The Sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification of sureties.

1167. SEC. 106. The qualifications of sureties and their justification shall be such as are prescribed by this Act in respect to bail upon an order of arrest.

Property concealed.

J.C.

1168. SEC. 107. If the property, or any part thereof, be concealed in a building or inclosure, the Sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession, and, if necessary, he may call to his aid the power of his county.

Sheriff to keep property.

J.C.

1169. SEC. 108. When the Sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving his lawful fees for taking and necessary expenses for keeping the same.

Proceedings when property claimed by other person.

J.C.

1170. SEC. 109. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to possession thereof, stating the grounds of such title or right, and serve the same upon the Sheriff, the Sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the Sheriff against such claim by an undertaking, made payable in gold coin of the United States, by two sufficient sureties, accompanied by their

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(a) Sec. 104, and Secs. 107 to 110, both inclusive, are made applicable to Justices' Courts by Sec. 1588, post, the word "Justice" being inserted in lieu of Clerk or Judge wherever it occurs, and the word "Constable" for Sheriff.

affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the Sheriff unless so made.

Notice, etc., to be filed. L.C.

1171. SEC. 110. The Sheriff shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER 3.—INJUNCTION.

Injunction defined.

1172. SEC. 111. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the Court in which the action is brought, or by a Judge thereof, and when made by a Judge may be enforced as the order of the Court. (1)

(1) When a bill is filed restraining County Commissioners from opening a road on the ground that they have not assessed the damages and provided for the payment thereof, it is error to grant a perpetual injunction. The Commissioners should only be restrained until they have complied with the preliminary requirements of the statute.—Champion v. Sessions, 2 Nev., p. 271.

When a Court grants a temporary restraining order, and makes a rule on the defendant to appear at chambers and show cause why a perpetual injunction should not be granted, this, although irregular, is not injurious to the defendant, if at chambers the injunction is made only to operate until a hearing on the merits.—Hawthorne and Wife v. Smith, 3 Nev., p. 182.

INJUNCTION A PREVENTIVE REMEDY.—An injunction is only issued to prevent apprehended injury or mischief, and affords no redress for wrongs already committed.—Sherman v. Clark, 4 Nev., p. 138.

DAMAGES INCIDENT TO INJUNCTION.—A remedy for injury already committed, though sometimes given as an incident to an injunction, is only given where a sufficient showing for an injunction is made out, and the injury resulted from the act enjoined.—Id.

PROBABILITY OF INJURY TO JUSTIFY INJUNCTION.—To make out a case for injunction, it must appear that there is at least a reasonable probability, not merely a bare possibility, that a real injury will occur if the writ is not granted.—Id.

ACTS NOT AUTHORIZING INJUNCTION.—Sherman, a stockholder in a mining company, filed a bill against Clark, who united in himself the character of Superintendent of the mine, with those of Secretary, Trustee, and Treasurer, of the company, alleging that the latter had seized and retained the books, ousted and ejected the President from his office; removed the office of the company without consent of the Board of Trustees; wrongfully canceled stock of another stockholder and transferred it to himself; deposited money belonging to the company with merchants and refused to pay the company debts with it; was applying for a patent to the mining ground; working the mine without the control of the Board of Trustees or President, and threatening to continue his said unlawful acts; and asked for an injunction to restrain him from interfering with the books and property, and exercising any of the functions of Superintendent, Secretary, Trustee, or Treasurer: *Held*, that no showing was made for an injunction.—Id.

INJUNCTION AS TO USURPATION OF OFFICE.—The right to an office in a company cannot be tried upon an application for an injunction; nor if an officer be wrongfully removed from his office can he be restored to it by injunction.—Id.

INJUNCTION AS TO REMOVAL OF MINING OFFICE.—Though a threatened, unauthorized, and injurious removal of the office of a mining company, by a person acting as Superintendent and Secretary, might be enjoined, an injunction would not reach the case of a removal already made.—Id.

INJUNCTION AS TO TRANSFER OF MINING STOCK.—Though a mining Secretary, who illegally issued stock to himself, might be enjoined from transferring such stock to a third person, it could only be done on a proper showing of the illegality of the issuance and proposed transfer.—Id.

NO INJUNCTION ON COMPLAINT ALONE WHEN FULLY DENIED BY ANSWER.—As a general rule, an injunction will not be granted upon a pleading alone, whose material averments are denied by the pleading of the opposite party.—Lady Bryan G. & S. M. Co. v. Lady Bryan Min. Co., 4 Nev., p. 414.

PRACTICE—INJUNCTIONS ANCILLARY TO CONTROVERTED LEGAL RIGHTS.—When an injunction is asked in an action as merely ancillary to what is claimed to be a legal right, the parties have a right to have the legal issues determined by a jury before a final injunction can properly issue.—Ophir Co. v. Carpenter, 4 Nev., p. 534.

INJUNCTION TOO LATE TO RESTRAIN ACT ALREADY DONE. Warrants already issued by a County Auditor are beyond the reach of an injunction suit brought to restrain him from issuing such warrants.—Webster v. Fish, 5 Nev., p. 190.

COUNTY WARRANTS ISSUED NOT AFFECTED BY SUBSEQUENT INJUNCTION.—An injunction, to restrain the issuance of warrants by a County Auditor, cannot affect parties interested in warrants already issued by him.—Id.

DISTINCTNESS OF COUNTY FUNDS—ISSUANCE OF COUNTY WARRANTS.—The mere fact that a creditor, having a right of payment out of the "General Fund" of a county, may have a right to enjoin the County Auditor from issuing warrants in favor of others against such Fund, does not give him a right to restrain the Auditor from issuing warrants against other Funds. Id.

WATER RIGHTS—NO RIPARIAN PROPRIETORSHIP ON PUBLIC LAND.—In a suit to enjoin the diversion of water from a river, which was first appropriated by the plaintiffs, it was stipulated that "the only title to the lands of plaintiffs and defendants is a possessory one, the fee being in the General Government: *Held*, that this agreement rebutted the proposition of a defendant that he was a riparian proprietor, or could claim the water as such.—Covington v. Becker, 5 Nev., p. 281.

REMOVAL OF WOOD CUT ON PUBLIC LAND BEFORE PATENT.—Where Peck, being the patentee of certain public land, procured an injunction to restrain Brown and others from cutting growing trees, and also from removing certain cordwood and other timber cut before the issuance of the patent and still remaining on the land: *Held*, that the injunction should be so modified as to allow the cordwood and cut timber to be removed.—Peck v. Brown, 5 Nev., p. 81.

CORDWOOD AND TIMBER CUT ON PUBLIC LAND.—Cordwood and other timber cut into merchantable form before, and remaining on public land at the date of, the issuance of a patent, is personal property, and does not pass with the land to the patentee.—Id.

The District Court has the power to appoint a receiver on an ex parte application, when a proper showing is made, as in this case.—Maynard v. Bailey, 2 Nev., p. 313.

The Court will appoint a receiver when one partner excludes his copartner from a participation in the affairs of the partnership. So, too, when both partners have assigned their respective interests, and the assignees cannot agree.—Id,

When suit is brought and summons issued, the Court has power to appoint a receiver before the summons is served on defendants. But the appointment of a receiver ought not to be made without notice, except in cases of emergency.—Id.

EQUITY JURISDICTION—REMEDY AT LAW.—Equity will not take jurisdiction where there is a full, complete, and adequate remedy at law; that is, where the wrong complained of may be fully compensated in damages which can easily be ascertained, and it is not shown that a judgment at law cannot be satisfied by execution.—Conley v. Chedic, 6 Nev., p. 222.

DISCRETION IN GRANTING PRELIMINARY INJUNCTIONS—PRACTICE ON APPEAL.—The granting of a preliminary injunction by a District Court is very much a matter of discretion, and when it is granted on a complaint exhibiting a prima facie case, and there is no answer put in, and no showing made that any defense on the merits exists, the order will not be disturbed.—Hobart v. Ford, 6 Nev., p. 77.

TAX SALES OF PERSONAL PROPERTY—INJUNCTION.—Where a complaint to restrain a County Assessor from selling certain personal property for taxes alleged that he would sell unless restrained, and thereby damage plaintiff in a certain amount of money: *Held*, that as the amount of damages was exactly stated, and there was no showing that a judgment therefor could not be collected, there was no case for a restraining order, injunction, or other equitable relief.—Conley v. Chedic, 6 Nev., p. 222.

In what cases may be granted.

1173. SEC. 112. An injunction may be granted in the following cases: First—When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. Second—When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff. Third—When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

When may be granted.

1174. SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits or other evidence. The complaint in the one case, and the affidavits or other evidence in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, without notice, a copy of the affidavit shall be served with the injunction.

After answer.

1175. SEC. 114. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order made as provided in section one hundred and sixteen, but in such case the defendant may be restrained until the decision of the Court or Judge granting or refusing the injunction.

Undertaking.

1176. SEC. 115. On granting an injunction, or a restraining order, the Court or Judge shall require, except where the State is a party plaintiff, a written undertaking, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the Court finally decide that the plaintiff was not entitled thereto.

Order for hearing.

1177. SEC. 116. If the Court or Judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order shall be made fixing a time and place for hearing the application for the injunction, a copy of which order shall be served upon the person or persons designated therein, and the defendant may in the meantime be restrained. Upon the hearing, the parties may use affidavits, other written evidence, and oral testimony.

Injunction to suspend business of corporation

1178. SEC. 117. An injunction or restraining order to suspend the general and ordinary business of a corporation shall not be granted without due notice of the application therefor, to be served in the manner prescribed for service of the summons in the action.

Motion to dissolve o modify.

1179. SEC. 118. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the Judge who granted the injunction, or to the Court in which the action is pending, or a Judge thereof, to dissolve or modify the same. The application may be made upon the complaint and the affidavit or affidavits on which the injunction was granted, if any were used, or upon affidavits or other testimony on the part of the defendant, with or without the answer. If the application be made upon affidavit, or other evidence, on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to the affidavits on which the injunction was granted, and the defendant may then, in proper cases, introduce rebutting affidavits or other evidence; *provided*, that for the purpose of allowing the plaintiff to introduce further evidence, the answer or verification thereto attached shall be deemed an affidavit.

Supreme Court to prescribe rules, etc

1180. SEC. 119. The Supreme Court may prescribe by rule the time when and the cases in which the service of affidavits to be used upon applications for injunctions, and motions to dissolve injunctions, shall be made; and may also provide by rule for the giving of notice before such hearings of the kind of testimony to be used, and make all needful rules on the subject of injunctions not in conflict with this or other Acts.

Injuncti may be refused, etc.

1181. SEC. 120. If, upon the hearing of an application for an injunction, or for the dissolution of an injunction, it does not satisfactorily appear that there is a sufficient cause for an injunction, or if it appear that the extent of the injunction is too great, it shall be refused, dissolved, or modified, as the case may be, and upon all such applications in actions respecting mines, the Court or Judge hearing the same may, instead of granting or continuing the injunction, make an order requiring the party against whom the application is made to give a bond in an amount fixed by such Court or Judge, with sufficient sureties, to be approved by such Court or Judge, conditioned for the payment to the plaintiff of all damages which he may sustain by reason of the use or occupation of the mine, or other acts complained of, by the party giving the bond, his or its agents, servants, employés, grantees, or other persons by his or its consent pending the litigation, if the plaintiff finally recover; or that upon failure to give such bond within the time prescribed in the order, the injunction shall be granted, or continued, as the case may be; or the Court or Judge may appoint a receiver to take charge of the mine, or the proceeds thereof, pending the litigation.

1182. SEC. 121. It shall be good cause, in the discretion of the Court or Judge, for the dissolution of an injunction that the

Dissolution of injunction. plaintiff is doing, or causing or permitting to be done, some act pending the litigation which, if continued, will be injurious to the defendant if he finally recover, or to the property in dispute. But the Court or Judge hearing a motion to dissolve an injunction may, instead of granting such motion, direct by order that the plaintiff give to the parties restrained a bond conditioned, as provided in section one hundred and twenty, or upon his failure to do so within the time prescribed in such order, that the injunction shall be dissolved.

Gold coin. 1183. SEC. 122. All undertakings and bonds provided for in this chapter shall be made payable in gold coin of the United States.

CHAPTER 4.—ATTACHMENT. (a)

Attachment. 1184. SEC. 123. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided in the J. C. following cases: First—In an action upon a contract for the direct payment of money, made, or by the terms thereof, payable in this State, which is not secured by mortgage, lien, or pledge upon real or personal property situated or being in this State, if so secured, when such security has been rendered nugatory by the act of the defendant. Second—In an action upon a contract against a defendant not residing in this State.

(a) Secs. 123 to 144, inclusive, are made applicable to Justices' Courts by Sec. 1588, post, the word "Justice" being inserted in lieu of that of "Judge or Clerk" wherever it may occur; provided that the writ of attachment shall be directed to the "Sheriff," or any Constable of any county of this State, and may be executed by the Constable, and wherever the word "Sheriff" occurs, the word "Constable" should be deemed to be included.

Writ, how issued. 1185. SEC. 124. The Clerk of the Court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing: First—That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counterclaims) upon a contract for the direct payment of money, and that such contract was made, or is, by the terms thereof, J. C. payable in this State, and that the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property situate or being in this State, or, if so secured, that said security has been rendered nugatory by the act of the defendant; or: Second—That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness as near as may be over and above all legal set-offs or counterclaims), and that the defendant is a non-resident of the State. Third—That the sum for which the attachment is asked is an actual bona fide existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant. (1)

(1) Great strictness in the form of the affidavit should not be required. The defendant is protected by bond.—Bowers v. Beck, 2 Nev., p. 139.

Where property is attached, the attaching creditor gives bond for damages. The debtor is in no imminent peril of losing his property.—Id.

Where an affidavit was made on the fifth of October, stating the necessary facts to justify the issuance of an attachment, but was not filed until the sixteenth, on which day the attachment was issued: *Held*, this was sufficient to justify the issuance of the writ. It having been shown that the debt was past due and unpaid on the fifth, the presumption of law is, it still remained so on the sixteenth, there being no showing to the contrary.—O'Neil v. New York and Silver Peak Co., 3 Nev., p. 141.

Per LEWIS, J., dissenting.—The provisional remedies under our code are in derogation of the common law, and the statute must be strictly followed. An affidavit that a debt is due eleven days before suit brought, is not conclusive that it is unpaid at the date of bringing the suit, and no presumption of law can be taken in lieu of the positive proof required to be offered by plaintiff's affidavit.—Id.

CONTRACT TO CUT CORDWOOD—RIGHT OF PROPERTY.—Hilger, having purchased certain standing timber, contracted with Gibbons to cut it into cordwood and deliver it at a certain place by a certain time, for which Hilger was to pay a certain price per cord, three fourths of the payment thereof as fast as delivered, and the balance when all delivered; it being also agreed that if payment was not made on delivery, or within ten days afterwards, Gibbons was to be the owner of the wood; and, further, that he should have a lien upon it for his pay. After Gibbons had cut the wood it was attached as his property, and none of it was delivered as stipulated in the contract: *Held*, that the wood could not be held on attachment against Gibbons as his property.—Hilger v. Edwards, 5 Nev., p. 84.

SEIZURE BY SHERIFF OF GOODS ATTACHED BY A CONSTABLE.—Where a Sheriff seized and sold on execution out of a District Court goods which were held by a Constable on attachment out of a Justice's Court: *Held*, that the Sheriff, though he was responsible to the Constable, was not so to the creditor in the attachment suit.—Foulks v. Pegg, 6 Nev., p. 136.

SPECIAL PROPERTY OF OFFICER IN PROPERTY ATTACHED. An officer who has seized goods upon attachment has a special property in them, coupled with the right of possession; and any interference therewith gives him a right of action against the wrongdoer.—Id.

RIGHTS OF ATTACHMENT CREDITOR AS TO PROPERTY ATTACHED.—An attachment creditor has no interest or property in or possession of the attached goods by reason of the levy, and cannot maintain an action in his own name for interference therewith against a wrongdoer, his only remedy being against the officer.—Id.

Undertaking required. J. C.

1186. SEC. 125. Before issuing the writ the Clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, not exceeding the amount claimed by the plaintiff, in gold coin of the United States, with sufficient sureties, to the effect that if the defendant recover judgment the plaintiff will pay, in gold coin of the United States, all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Requirement of writ. J. C.

1187. SEC. 126. The writ shall be directed to the Sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, in the money or currency of the contract, in which case to take such undertaking. Several writs may be issued at the same time to the Sheriffs of different counties.

What property may be attached. J. C.

1188. SEC. 127. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Writ, how executed. J. C

1189. SEC. 128. The Sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section one hundred and twenty-six be not given, as follows: First—Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the Recorder of the county. Second—Personal property capable of manual delivery shall be attached by taking it into custody. Third—Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the President, or other head of the same, or the Secretary, cashier, or managing agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ. Fourth—Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursance of such writ.

1190. SEC. 129. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to defendant, the Sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

Property in hands of other persons.

J. C.

1191. SEC. 130. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property is delivered up or transferred, or such debts be paid to the Sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Liability of other persons.

J. C.

1192. SEC. 131. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the Court, or Judge, or a referee appointed by the Court, or Judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The Court, or Judge, may, after such examination, order personal property capable of manual delivery to be delivered to the Sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Examination.

J. C.

1193. SEC 132. The Sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request at the time of service the party owing the debt, or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Return of Sheriff.

J. C.

1194. SEC. 133. If any of the property attached be perishable, the Sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The Sheriff's receipt shall be a sufficient discharge for the amount paid.

Perishable property to be sold.

J. C.

Property claimed by third party. J. C. 1195. SEC. 134. If any personal property attached be claimed by a third person as his property, the Sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution.

Judgment, how satisfied. J. C. 1196. SEC. 135. If judgment be recovered by the plaintiff, the Sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or a claimant, as hereinafter provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose: First, by paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment; second, if any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of sale. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Same. J. C. 1197. SEC. 136. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees, to the payment of the judgment, any balance shall remain due, the Sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the Sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Proceedings when execution returned unsatisfied. J. C. 1198. SEC. 137. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section one hundred and twenty-six, or section one hundred and forty, or he may proceed as in other cases upon the return of an execution.

Proceedings when defendant recovers judgment. J. C. 1199. SEC. 138. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the Sheriff, and all the property attached remaining in the Sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

Discharge of attachment, when made J. C. 1200. SEC. 139. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the Court in which the action is pending, or to the Judge thereof, for an order to discharge the attachment, wholly or in part, upon the execution and filing of the undertaking mentioned in the next section. Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking and the justification of the sureties thereon, if required by the plaintiff, of all or any part of the property, money, debts, or credits attached, as the case may be. All the proceeds of sales and moneys collected by the Sheriff, and all the property attached remaining in his hands, so released, shall be delivered or paid to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff.

1201. SEC. 140. On granting such order, the Court or the Judge shall require an undertaking on behalf of the defendant, with at least two sureties, residents and freeholders, or householders, in the county, which shall be filed to the effect, in case the value of the property or the amount of money, debts, or credits sought to be released shall equal or exceed the amount claimed by the plaintiff in the complaint, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed by the plaintiff, and in the money or currency of the contract; or to the effect, in case the value of the property or the amount of money, debts, or credits sought to be released shall be less than the amount so claimed by the plaintiff, that the defendant will pay the amount of such judgment, to the extent of the value of the property, or amount of money, debts, or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the value of such property, money, debts, or credits, and in the money or currency of the contract. The value of the property sought to be released, if disputed, shall be determined, in the money or currency of the contract, by the Court or Judge thereof, upon proof, or by a sworn appraiser or sworn appraisers, not exceeding three, to be appointed by the Court or Judge for that purpose. Before filing the undertaking, the defendant shall serve a copy thereof upon the plaintiff, and if the plaintiff require a justification by the sureties, he shall give notice thereof to the defendant within two days; or at the time of giving notice of motion for an order to discharge the attachment, the defendant may in his notice name the sureties, and if the plaintiff require them to justify he shall give notice thereof at the hearing of the motion. If required, the sureties shall justify before the Court in which the suit is pending, or the Judge thereof, after reasonable notice. (1)

Undertaking of defendant.

J. C.

(1) There is nothing in the policy of the law to forbid a bond given to release property from attachment, being enforced according to the very letter of its condition.—Bowers v. Beck, 2 Nev., p. 139.

Caldwell v. Colgate and others, 7 Barbour, S. C. Reports, and Homan et al. v. Brinkerhoff, 1 Denio, p. 184, denied to be law.—Id.

The rule laid down in McMillan v. Dana, 18 Cal., p. 339, contains the true rule.—Id.

The Courts, in construing a bond, cannot interpolate into it conditions it does not contain.—Id.

Where a bond for a release of goods under an attachment is conditioned for payment, if judgment is rendered against the owner of the goods attached, it becomes absolute upon the rendition of judgment whether the attachment is or is not sustained.—Id.

Per LEWIS, C. J., dissenting: The dismissal of an attachment operates as a complete release of the sureties on the bond for release of attached property.—Id.

When a plaintiff fails to show his case is one of those in which an attachment is authorized to issue, he is not entitled to the benefit of the lien created by the attachment. Why should he be more entitled if defendant overturns his prima facie case, on which it was issued?—Id.

If the attachment is discharged, the property attached is necessarily released; so, too, if the attachment is held to have been improperly issued, the bond must become unavailable.—Id.

A bond given to release property illegally attached, may be held as one given under duress of property.—Id.

A. sues B., and attaches his goods. C., for the purpose of releasing the goods, entered into a bond conditioned to pay to plaintiff, on demand, any judgment he may recover against B. The attorneys of A. and B. adjust the amount due from B. to A., and enter into a written stipulation that judgment may be entered up in Court in favor of A. for the amount due, with a promise that if B. pays half the amount in thirty days, he may have sixty days to pay the balance. The judgment is entered up for the amount found due to A., but there is no order of Court in regard to staying execution either for thirty or sixty days. *Held*, this arrangement did not discharge the surety on the bond given to release the property attached.—Seawell v. Cohn, 2 Nev., p. 308.

Motion for discharge of attachment. J. C.

1202. SEC. 141. The defendant may also, any time before the time of answering expires, apply on motion, upon reasonable notice to the plaintiff, to the Court in which the action is brought, or to the Judge thereof, for the discharge of the attachment, on the ground that the writ was improperly issued.

Plaintiff may oppose by other evidence. J. C.

1203. SEC. 142. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the writ of attachment was issued.

Discharge of writ. J. C.

1204. SEC. 143. If upon such application it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Return of Sheriff. J. C.

1205. SEC. 144. The Sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise within twenty days after its receipt, with a certificate of his proceeding indorsed thereon or attached thereto.

CHAPTER 5.—DEPOSIT IN COURT.

Court may order delivery.

1206. SEC. 145. When it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the Court may order the same, upon motion, to be deposited in Court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the Court.

Appointment of receiver.

1207. SEC. 146. A receiver may be appointed by the Court in which the action is pending, or by a Judge thereof: First—before judgment, provisionally, on the application of either party, when he establishes a prima facie right to the property, or an interest in the property which is the subject of the action, and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired. Second—After judgment to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal; and, Third—In such other cases as are in accordance with the practice of Courts of equity jurisdiction.

TITLE VI.

Of the trial and judgment in civil actions.

CHAPTER 1.—JUDGMENT IN GENERAL.

Judgment.

1208. SEC. 147. A judgment is the final determination of the rights of the parties in the action or proceeding, and may be entered in term or vacation. (1)

(1) A judgment is as final when pronounced by the Court as when it is entered and recorded by the Clerk, as required by statute; the judgment is the judicial act of the Court; the entry is the ministerial act of the Clerk.—California State Telegraph Company v. Patterson, 1 Nev., p. 150.

If the decision of the Court finally disposes of the action, and nothing further is to be done by it to complete that disposition, it is a final judgment from which an appeal will lie under our statute, whether it be perfected by entry in the judgment book or not.—Id.

The decision of the Court is the judgment; the entry by the Clerk is the evidence of it merely.—Id.

A judgment may be final, although it is not recorded in a judgment book or entered in a judgment docket.—Id.

When any rights are claimed by virtue of a judgment of a Court of special and limited jurisdiction, all the facts necessary to confer jurisdiction must be affirmatively shown.—Mallet v. Uncle Sam Mining Co., 1 Nev., p. 188.

An appellate Court will presume that the judgment of the lower Court was sustained by the evidence in the absence of a showing to the contrary.—Carpenter v. Johnson and Waddell, 1 Nev., p. 332.

A judgment rendered during vacation on a demurrer is irregular and void.—Id.

A judgment not upon the merits is not a complete bar, nor can it be used as evidence in another action to establish the facts constituting the merits of the action in which it was rendered.—Van Vliet v. Olin, 1 Nev., p. 495.

If the suit is discontinued or the plaintiff becomes nonsuit, or for any other cause there has been no judgment of the Court upon the matter in issue, the proceedings are not conclusive.—Id.

The voluntary dismissal of an action by the plaintiff can settle no rights of property between him and the defendant, nor is it an admission of any right whatever in the defendant.—Id.

Courts of records may always amend a clerical error in a judgment or order at a subsequent term, when the error is shown by the record, and there is no necessity to resort to other evidence than is afforded by the record to correct the error.—Sparrow and Trench v. Strong, 2 Nev., p. 362.

There is great conflict of authority as to whether an inferior Court can amend its record whilst the case is pending, on writ of error, in a superior Court: *Held*, that the pendency on the writ of error is not an impediment to the amending of the record so as to correct clerical errors.—Id.

JURISDICTION OVER JUDGMENT AFTER EXPIRATION OF TERM.—During the term at which a judgment is rendered, a District Court may, perhaps, even without a statement or affidavits, upon motion of a party injured, amend or set aside an erroneous judgment; but to continue full and complete jurisdiction in the Court over the case beyond the term, some order must be made or proceeding taken in accordance with statute.—State v. First National Bank, 4 Nev., p. 358.

POWER OF COURT OVER ITS JUDGMENT.—When a judgment has once been rendered, the Court has no right to set it aside, except in case of error in some respect, or injustice in the result.—Scott v. Haines, 4 Nev., p. 426.

WRONG REASON DOES NOT VITIATE CORRECT JUDGMENT. A wrong reason for a judgment, which is in itself correct, will not vitiate or affect it.

How given. 1209. SEC. 148. Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Against several defendants. 1210. SEC. 149. In an action against several defendants, the Court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

Extent of relief. 1211. SEC. 150. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

1212. SEC. 151. An action may be dismissed, or a judgment of nonsuit entered in the following cases: First—By the plaintiff himself at any time before trial, upon the payment of costs, if a counterclaim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the Clerk to the defendant, who may have his action thereon. Second—By either party upon the written consent of the other. Third—By the Court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth—By the Court when upon trial and before the final submission of the case the plaintiff abandons it. Fifth—By the Court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions shall be made by an entry in the Clerk's register. Judgment may thereupon be entered accordingly. In every other case the judgment shall be rendered on the merits. (1) **Dismissal of action, or nonsuit.**

(1) SPECIFICATION OF GROUNDS OF NONSUIT. — The grounds urged for a nonsuit are required to be as specifically designated as any other exceptions or objections taken in the course of a trial.—Sharon v. Minnock, 6 Nev., p. 377.

CHAPTER 2.—JUDGMENT UPON FAILURE TO ANSWER.

1213. SEC. 152. Judgment may be had, if the defendant fail to answer the complaint, as follows: First—In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-two. Second—In other actions, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk shall enter the default of the defendant; and thereafter the plaintiff may apply, at the first, or any subsequent term of the Court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the Court to give judgment, or to carry the judgment into effect, the Court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the Court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided. Third—In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the Court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the State, shall require the plaintiff, or his agent, to be **Judgment on failure to answer.**

examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. (1)

(1) Where judgment by default is taken, the plaintiff is confined to a recovery of the particular amount or thing demanded in the prayer of the complaint.—Burling v. Goodman, 1 Nev., p. 314.

Where the demand is for judgment in Federal currency generally, that is, in dollars and cents, a party cannot recover a judgment upon a default payable in a specific kind of money—gold coin, for instance—especially if the latter kind of money exceed the former in actual value.—Id.

After an answer is *filed*, judgment cannot be entered by default, although the answer may not be served.—Maples v. Geller, 1 Nev., p. 233.

Service of answer is for convenience of plaintiff's counsel, and may be enforced by the Court, but is not necessary to give jurisdiction of the defendant.—Id.

A joint action *at law* cannot be maintained against survivor and administrator of deceased maker of a promissory note.—Id.

In an action for the recovery of unliquidated damages, where the defendant fails to appear, it is not necessary to call a jury to assess the damages; the Court may either hear the proof itself or order a reference for that purpose. One of these modes must, however, be pursued. It is erroneous to render judgment by default without proof in such cases.—Ballard v. Purcell, 1 Nev., p. 342.

During the term in which judgment is rendered, the Court has complete control of it, and, upon a proper showing, may set it aside.—Id.

It is error to render judgment against a party who is made defendant by amending a complaint, without giving him an opportunity to answer.—Mears v. James, 2 Nev., p. 342.

When a default is improperly taken, the defendant ought, if an opportunity is presented during the term at which it was taken, to apply to the Court below for relief.—Kidd v. The Four-twenty Min. Co., 3 Nev., p. 381.

Could the lower Court set aside a default and judgment after the term had expired within which the judgment was rendered—*Quere?*—Id.

Appeal is a proper remedy to set aside a judgment by default irregularly and erroneously entered.—Id.

JUDGMENT BY DEFAULT—INEXCUSABLE NEGLECT.—On a motion to open a judgment by default, defendant presented his affidavit that he had employed an attorney to defend him in due time; that the attorney had filed a demurrer and advised him that it was good and would be sustained, and ample time be given to answer; that immediately afterwards defendant was called away and unavoidably detained in another county till after the demurrer was overruled, and till the next day

(Sunday) after the five days given to answer had expired; that on the next day (Monday), when he came to prepare and file his answer, he found that default and judgment had been entered against him, and that he had a meritorious defense; and his attorney also presented an affidavit that during the five days allowed to answer he had made repeated efforts to advise with the defendant, but without success; and that he had every reason to suppose, until the evening of the last day, that the time to answer would be extended by consent: *Held*, a case of inexcusable negligence, and that the refusal of the Court below to open the default and judgment was proper.—Harper v. Mallory, 4 Nev., p. 448.

HOWE v. COLDREN, ante, p. 171, so far as the Supreme Court refused to interfere with the order of the Court below in setting aside the default in that case, was correctly decided; but the opinion contains many dicta on the subject of defaults which are not applicable to the facts involved therein, and are therefore not authority.—Id.

DISMISSAL OF ACTION BY PLAINTIFF NOT TO AFFECT INVERVENORS.—When O'Connell & Splain commenced a suit to foreclose a mechanics' lien against Ivers & Cook; and Elliott, and Patty & Doane intervened as lien claimants, and after appearance put in by defendants to the interventions, O'Connell & Splain filed a dismissal of the suit: *Held*, that the dismissal could not affect the rights of the intervenors, and that they had a right to adjudication as between themselves and defendants.—Elliot v. Ives, 6 Nev., p. 287.

PROCEEDINGS TO FORECLOSE MECHANICS' LIEN.—The statute relating to mechanics' liens (Stats. 1861, p. 36,) contemplates a formal suit, a publication of notice, an appearance upon the part of lien claimants other than those commencing the suit, and a disposition of the entire matter of liens against the property affected in one proceeding; and any person prejudiced by error in the proceeding may object.—Id.

NOTICE OF SUIT TO FORECLOSE MECHANICS' LIEN.—The failure of a plaintiff, in an action to foreclose a mechanics' lien, to publish notice of the suit, will not deprive a lien claimant, who intervenes in the action, of his right to have an adjudication of his claim.—Id.

FORECLOSURE OF MECHANICS' LIEN—RIGHTS OF INTERVENORS.—Where, in a suit to foreclose a mechanics' lien, certain lien claimants intervened, and defendants answered and demurred to their interventions: *Held*, that the Court acquired jurisdiction of the subject matter, and the parties, and the whole thereof; and that the plaintiff could not, by a dismissal of the suit, prevent an adjudication as to the rights of the intervenors.--Id.

CHAPTER 3.—OF ISSUES, AND THE MANNER OF THEIR DISPOSITION.

When an issue arises. 1214. SEC. 153. An issue arises when a fact or conclusion of law is maintained by the one party, and controverted by the other. Issues are of two kinds: First, of law; and second, of fact.

Of law. 1215. SEC. 154. An issue of law arises upon a demurrer to the complaint, or an answer as to some part thereof.

Of fact. 1216. SEC. 155. An issue of fact arises: First—Upon a material allegation in the complaint, controverted by the answer; and, Second—Upon new matter in the answer, except an issue of law is joined therein.

Of law, how tried. 1217. SEC. 156. An issue of law shall be tried by the Court unless it be referred, upon consent, as provided in Chapter Six of this Title.

Of fact, how tried. 1218. SEC. 157. An issue of fact shall be tried by a jury, unless a jury trial is waived, or a reference be ordered, as provided in this Act. Where there are issues, both of law and fact, to the same complaint, the issue of law shall be first disposed of.

Entry of cases on calendar. 1219. SEC. 158. The Clerk shall enter cases upon the calendar of the Court according to the date of the issue, unless otherwise provided by rule of Court.

Issue brought to trial. 1220. SEC. 159. Either party may bring the issue to trial, or to a hearing, and in the absence of the adverse party, unless the Court for good cause otherwise direct, may proceed with his case and take a dismissal of the action, or a verdict, or judgment, as the case may require.

Postponement of trial. 1221. SEC. 160. A motion to postpone a trial, on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The Court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The party obtaining the postponement of a trial shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance be then taken by deposition before a Judge or Clerk of the Court in which the case is pending, or before such Notary Public as the Court may indicate, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witnesses were produced. In actions involving the title to mining claims and quartz ledges, if it be made to appear to the satisfaction of the Court that in order that justice may be done, and the action fairly tried on its real merits, it is necessary that further developments should be made, and that the party applying has been guilty of no laches and is acting in good faith, the Court shall grant the postponement of the trial of the action, giving the party a reasonable time in which to prepare for trial. And in granting such postponement, the Court may, in its discretion, annex as a condition thereto an order that the party obtaining such postponement shall not, pending the trial of the action, remove from the premises in controversy any valuable quartz rock, earth, or ores; and for any violation of an order so made, the Court or the Judge thereof may punish for contempt, as in the cases of violation of an order of injunction, and may also vacate the order of postponement. (1) Same.

(1) A motion for a continuance is always addressed to the sound discretion of the Court, and should not be interfered with except where there has been a manifest abuse of that discretion.—Choat & Brown v. Bullion Mining Company, 1 Nev., p. 73.

But if a party shows himself clearly entitled to a continuance, and the Court below refuses the application, this Court must interfere.—Id.

When an application is made for a continuance on the ground of the absence of a witness, it is certainly in the discretion, if it is not the absolute duty, of the Court, under our statute, to deny the application when the party opposing the motion will admit that the witness, if present, would swear to the facts as set out by the party applying for the continuance.—O'Neil v. New York and Silver Peak Mining Co., 3 Nev., p. 141.

When a party makes out a good prima facie case for a continuance on account of the absence of a material witness, the Court is not justified in refusing the continuance because it may imagine the possible existence of facts which, if shown, would have been sufficient in avoidance of the case made by the party moving.—Beatty v. Sylvester, 3 Nev., p. 228.

When the Court below errs in refusing a continuance, and an exception is taken and made a part of the record by regular bill of exceptions, signed by the Judge, there is no imperative necessity for a motion for a new trial to bring the point before this Court.—Id.

JOINT DEBTOR DEFENDANT DECLARED A BANKRUPT—CONTINUANCE.—Where, in a suit against partners on a joint claim against them, it appeared that one had been declared a bankrupt, but had not yet received his discharge, and the case was continued as to him: *Held*, on a motion for a continuance as to the other partner, that the trial could not proceed against him until a disposition of the bankrupt proceedings of his copartner.—Tincum v. O'Neale, 5 Nev., p. 93.

PRACTICE ACT, SEC. 160—DEVELOPMENT OF MINES—EVIDENCE.—There is nothing in Sec. 160 of the Practice Act (which authorizes a delay of proceedings in mining cases for the purpose of allowing developments to be made) to show that it was intended to make actual developments the only or even the best evidence admissible.—Silver Mining Co. v. Fall, 6 Nev., p. 116.

CHAPTER 4.—TRIAL BY JURY.

ARTICLE I.

Formation of the jury.

Jury, how drawn.

1222. SEC. 161. When the action is called for trial by jury, the Clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the Sheriff shall summon, under the direction of the Court, from the citizens of the county, and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than four. Such consent shall be entered by the Clerk in the minutes of the trial.

To be sworn. Form of oath.

1223. SEC. 162. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they, each of them, will well and truly try the matter in issue between ———, the plaintiff, and ———, the defendant, and a true verdict render according to the evidence. After the oath or affirmation has been administered and the jury has been fully impaneled, it shall be the duty of the Court to order the jury into the custody of the Sheriff, or other officer selected by the Court, and the jurors shall not be allowed to separate or depart from the custody of the Sheriff, or other officer, until they have been duly discharged, unless by the consent of the parties to the action. It shall be the duty of the Sheriff, at the charge of the parties to the action, to prepare suitable and comfortable apartments, and prepare food for the jury pending the trial.

Challenge.

1224. SEC. 163. Either party may challenge the jurors; but when there are several parties on either side, they shall join in a challenge before it can be made, unless the Court otherwise order or direct. The challenges shall be to individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to four peremptory challenges. (a) (1)

(a) In Justices' Courts each party has three peremptory challenges, and may challenge for any cause set forth in Sec. 164. (See Sec. 1609, post.)

(1) If a disqualified juror is forced on a trial jury against the protest of one of the parties, we may reasonably infer injury resulted from such an error.—Fleeson v. Savage Min. Co., 3 Nev., p. 157.

If a juror is challenged for cause, that challenge is overruled, and he is then challenged peremptorily, there does not necessarily arise any inference that the challenging party is thereby injured. An injury could only arise in case he was compelled to exhaust all his peremptory challenges, and afterwards have an objectionable juror placed on the panel for want of another challenge.—Id.

When only one peremptory challenge is shown to have been used, the Court will presume the other three were not used.—Id.

Where a juror is challenged for cause, that challenge is erroneously overruled, and the challenging party afterwards moves for a new trial on the ground that he was forced to exhaust his *peremptory challenges* on this juror, this assignment of error negatives the idea of the juror having served on the panel.—Id.

JUROR—CHALLENGE FOR CAUSE.—Where a juror, on examination as to his qualifications, said that he had heard something of the matter, and had an impression which it would require testimony to remove, that he had no bias and his impression was very vague, and that he had never talked with any one who pretended to know the facts: *Held*, that a challenge for cause was properly overruled.—Estes v. Richardson, 6 Nev., p. 128.

GROUNDS OF CHALLENGE FOR CAUSE TO BE SPECIFIED. The grounds of challenge to jurors for cause are pointed out by statute, and a party desiring to have such challenge tried must specify the ground or grounds upon which he bases it.—Id.

1225. SEC. 164. Challenges for cause may be taken on one or more of the following grounds: First—A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second—Consanguinity or affinity within the third degree to either party. Third—Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner, or united in business with either party; or being security on any bond or obligation for either party. Fourth—Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action; or being then a witness therein. Fifth—Interest on the part of the juror in the event of the action, or in the main question involved in the action; except the interest of the juror as a member or citizen of a municipal corporation. Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action, or the main question involved therein; *provided*, that the reading of newspaper accounts of the subject matter before the Court shall not disqualify a juror either for bias or opinion. Seventh—The existence of a state of mind in the juror evincing enmity against or bias to either party. (a)

Challenge for cause.

J. C.

(a) Sec. 164 made applicable to Justices' Courts by Sec. 1225.

1226. SEC. 165. Challenges for cause shall be tried by the Court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

Challenge, how tried.

ARTICLE II.

Conduct of the trial.

Juror becoming sick.

1227. SEC. 166. If, after the impaneling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case, the trial may proceed with the other jurors, or a new jury may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impaneled.

Charge to jury.

1228. SEC. 167. In charging the jury the Court shall state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The Court shall furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or shall sign, at the time, a statement of such points prepared and submitted by the counsel of either party. On the trial, either party may require the Clerk to take down the testimony in writing. (1)

(1) When a Court is laying down a general rule of law, it is not improper to notice exceptions to the general rule or such circumstances as will prevent its operation.—Van Valkenburg v. Huff, 1 Nev., p. 142.

When an action is brought for money advanced, labor performed, commissions, etc., amounting, as the complaint shows, to five thousand six hundred and thirty-one dollars and thirty-seven cents, and the complaint admits a payment on account of two thousand nine hundred and thirty-two dollars and twenty-five cents, if afterward a bill of particulars is filed, showing that a large portion of plaintiff's claim is for items not covered by or included in any of the counts of his declaration or complaint, it is error to instruct the jury that they may render a verdict for the amount of all those items of the bill of particulars embraced within the scope of the complaint and leave the credit which the plaintiff acknowledges to be offset by those items of his bill of particulars, which are not embraced within the scope of his complaint.—Huguet v. Owen, 1 Nev., p. 464.

Where damages are claimed for depositing a large quantity of earth on the premises of plaintiff, and it is shown that the cost of removing it would exceed the value of the premises, it is error to charge the jury that the sum of money which it would take to remove the earth from the plaintiff's lot is the proper measure of damages.—Harvey v. The Sides Silver M. Co., 1 Nev., p. 539.

It is proper for a Court to refuse instructions containing correct principles of law, if there is no evidence before the jury making them applicable to the case on trial.—Sherman v. Dilley, 3 Nev., p. 22.

The rule that a judgment must be reversed where instructions on a material point are contradictory, is not an absolute and unqualified rule. If one party asks for an instruction, which is given by the Court, laying down a rule of law in language too broad and unqualified, and the other side then asks an instruction, which is also given, qualifying and limiting the former instruction, and to some extent contradicting it, if the second instruction contains only sound law, the conflict between the two is not an error of which the party can complain who obtained the instruction which was too broad and unqualified.—Lobdell v. Hall, 3 Nev., p. 507.

Instructions given or refused by the lower Court will not be inquired into on appeal, unless the record shows that the giving or refusal to give them was excepted to at the time. Per JOHNSON, J.—Id.

Instructions given to a jury without objection are presumed to be with the consent of the parties, and such consent is a waiver of any right thereafter to question their correctness in that particular case. Per JOHNSON, J.—Id.

EQUITY CASE BEFORE JURY.—If an equity case is treated as an ordinary action at law and submitted to a jury as such, and the Court considers itself bound and controlled by the verdict as in an action at law, each party has the same right with respect to instructions as if it were a case at law.—Van Vliet v. Olin, 4 Nev., p. 95.

INSTRUCTIONS TO JURY IN EQUITY CASE.—In a purely equity case, when the Judge simply impanels a jury to find specific facts, it seems that neither party has a right to ask the Court to instruct the jury, the Judge not being controlled by the verdict.—Id.

RIGHT TO JURY IN EQUITY CASE.—In a purely equity case, the calling of a jury is a matter of discretion with the Judge and not a matter of right in the parties.—Id.

QUERY.—Can the parties in an action to determine an adverse claim to land, under Sec. 254 of the Practice Act, demand a jury trial as a matter of right ?--Id.

Where an action is brought to recover a water right and mill site, described by metes and bounds, as land boundaries are usually described: *Held*, that an instruction to the effect "that the plaintiff, in order to recover, must prove that he was entitled to the premises and water, and that defendants damaged him by the diversion of the water," is erroneous. To entitle plaintiff to recover, it was only necessary to prove title and immediate right of possession in himself, and the occupancy by defendants of the premises described when suit was brought.—Dilley v. Sherman, 2 Nev., p. 67.

When a plaintiff claims water on the ground of prior appropriation, it is error in the Court to refuse an instruction to this effect: "The plaintiff is not entitled to any greater quantity of the water of Desert Creek than he actually appropriated prior to defendant's appropriation."—Lobdell v. Simpson, 2 Nev., p. 274.

What would have been the rule if plaintiff had claimed by reason of occupancy of the land, and as riparian proprietor? *Query.*—Id.

At common law, riparian proprietors were entitled to have the water naturally flowing over or past their land, continue so to flow without interruption or diminution.—Id.

ACTION TO DETERMINE ADVERSE CLAIM TO LAND.—In an action to determine an adverse claim to land lying on both sides of a river, defendant asked an instruction to the jury, to which the whole case was submitted, "that if they found, from the evidence, that plaintiff had shown a right only to that portion of the land on the north side of the river, he was not entitled to recover with respect to that located on the south side," which instruction was refused. *Held,* clearly error.—Van Vliet v. Olin, 4 Nev., p. 95.

RELIEF UNDER SEC. 254 OF PRACTICE ACT.—In an action to determine an adverse claim to land, under Sec. 254 of the Practice Act, a Court has no right to decree that defendant has no title to or right in land to which plaintiff fails to show a possession or title in himself.—Id.

CONTINGENT COUNSEL FEES, WHEN SUIT COMPROMISED.—An instruction in a suit on a *quantum meruit* to recover counsel fees that, "if plaintiffs' fee was to be contingent on success, and defendant settled the suit without plaintiffs' consent, plaintiffs could recover what their services were worth," does not incorrectly state the law.—Hardy v. The Ophir Co., 4 Nev., p. 304.

INSTRUCTION ON ABSTRACT POINTS OF LAW.—An instruction to the jury upon the law governing a state of facts not developed in the evidence, is not an error authorizing a new trial, unless it is probable such instruction resulted prejudicially to the party complaining of it.—Id.

COUNSEL FEES, TRAVELING EXPENSES, AND TIME LOST.—An instruction to the jury in a suit to recover counsel fees, that, "if plaintiffs were employed by defendant to come from San Francisco to Virginia City, or from San Francisco to Aurora, and there was no special agreement as to the amount to be paid, they can only recover the value of the services rendered at the place where they were rendered, with the addition of reasonable traveling expenses; and if the traveling expenses were paid by defendant, then they cannot be recovered by plaintiffs:" *Held,* clearly erroneous, and properly refused.—Id.

PROVINCE OF JUDGE AND JURY—REDUCTION OF VERDICT BY JUDGE.—In an action on an injunction bond, the Judge instructed the jury to consider certain items of alleged damage, which should not have been considered; and in deciding a motion for a new trial, endeavored to correct the error by reducing the verdict and confining it to the amounts claimed upon the counts by him considered good: *Held,* that this was assuming the province of the jury, and could not be done.—Brown v. Jones, 5 Nev., p. 374.

DAMAGES ON INJUNCTION BONDS.—The actual expense and loss occasioned by a writ of injunction are a proper subject of consideration in a suit on the injunction bond, including the costs of the original proceeding, the reasonable counsel fee paid, agreed to be paid, or liquidated, for setting aside the injunction, and such other damage as is the natural and proximate consequence of the issuance and enforcement of the writ, and no more; nothing, generally, can be included which is not the actual, natural, and proximate result of the injunction.—Id.

MODIFICATION OF INSTRUCTIONS.—In a suit on two policies of insurance, an instruction was asked to the effect that if the jury found that insured, in giving an account of his loss as required by a condition indorsed on the second policy, was guilty of fraud (which fraud was to forfeit all benefit under both policies), they should find for defendant; and the Court modified the instruction by striking out "you must find for defendant," and substituting "the policy can for that reason be vitiated:" *Held*, that the modification was error, as it destroyed the force of a correct instruction, rendered vague what before was clear, and confined the effect of a violation of the condition to one policy alone.—Gerhauser v. North British Company, 6 Nev., p. 15.

JURIES NOT MISLED BY UNOBJECTIONABLE INSTRUCTIONS.—It cannot be claimed that a jury in a criminal case has been misled by a charge of the Court, in which no specific error is suggested or appears.—State v. McGinnis, 6 Nev., p. 109.

ARIZONA SILVER LEDGE—PROOF REQUIRED TO SUPPORT A PLAINTIFF'S THEORY.—When it appeared that plaintiff owned the Arizona silver ledge south of a certain line, and defendant owned north of the line, and suit was brought to recover a deposit and prevent defendant working at a point south of the line, on the theory that it was on the ledge, which defendant denied; and the Court instructed the jury that, to entitle the plaintiff to recover, he must establish his theory conclusively, and not merely by a preponderance of evidence: *Held*, error. Silver Mining Co. v. Fall et al., 6 Nev., p. 116.

INSTRUCTIONS—EVIDENT MEANING VERSUS LITERAL LANGUAGE.—Where in an instruction the Court used the phrase, "The existence of such theory must be established by the plaintiff conclusively:" *Held*, that although taken literally the language was nonsense, the Court evidently intended to say, and it should be assumed the jury so understood it, that the correctness of the theory must be so established.—Id.

PROOF OF "THEORY OF CASE."—If the establishment of a plaintiff's case depends upon the establishment of a theory, the correctness of the theory need not be established by any stronger proof than would be required for the case itself, which in general is only preponderating proof.—Id.

CONCLUSIVE PROOF NOT REQUIRED.—"Conclusive proof" is not required by the law; that degree of certainty is left to the domain of mathematics.—Id.

AMOUNT OF SECONDARY EVIDENCE TO ESTABLISH A FACT. If evidence of a secondary character be admitted to establish a fact, there is no rule that requires more of such evidence than would be required of the best.—Id.

INSTRUCTION INAPPLICABLE TO ISSUE.—A judgment will not be reversed on account of an erroneous instruction, when it appears that it was not applicable to the issues and could not have injured.—Brown v. Lillie, 6 Nev., p. 244.

ERROR WITHOUT PREJUDICE.—If upon admitted or undisputed facts a verdict for plaintiff upon a question of title to property could not legally have been against him, it cannot be said that the admission of illegal evidence upon the same point, or the refusal of the Court to instruct the jury to disregard it, could have prejudiced the defendant.—Id.

WHOLE CHARGE TO JURY TO BE CONSIDERED AS ENTIRETY.—In determining whether an instruction or portion of a charge is erroneous or calculated to mislead the jury, the whole charge must be taken together and considered as an entirety; and if anything essential, omitted from the instruction or portion of charge, be found in another instruction or portion of charge, the omission will not be fatal.—Caples v. C. P. R. R. Co., 6 Nev., p. 265.

FACTS PROVED AND NOT CONTROVERTED NEED NOT GO TO THE JURY.—It is no error for a Court in its charge to take from the consideration of the jury a fact proven by one party and not controverted by the other.—Sharon v. Minnock, 6 Nev., p. 377.

"CHARACTER" OF INJURED PERSON NOT INVOLVED IN SUIT FOR NEGLIGENCE.—In an action against a passenger carrier for personal injuries caused by negligence, the character of plaintiff cannot be considered as an element of calculation in estimating the amount of damages; and an instruction submitting it to the jury for such purpose is error.—Johnson v. Wells, Fargo & Co., 6 Nev., p. 224.

PRESUMPTION THAT JURIES FOLLOW INSTRUCTIONS.—The presumption in all cases of jury trials is that the jury apply the law as given by the Court, and upon such law and the evidence render their verdict; and no appellate Court can decide the effect of the one separate from the other.—Id.

Jury may decide in Court, or retire.

1229. SEC. 168. After hearing the charge, the jury may either decide in Court, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the Court. The officer shall, to the utmost of his ability, keep the jury separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the Court or Judge, except to ask them if they have

Duty of officers.

agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

1230. SEC. 169. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the Court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person. What papers jury may take.

1231. SEC. 170. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into Court. Upon their being brought into Court, the information required shall be given in the presence of or after notice to the parties or counsel. Return of jury for instructions.

1232. SEC. 171. In all cases where a jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the Court shall direct. Proceeding when jury discharged without verdict.

1233. SEC. 172. While the jury are absent, the Court may adjourn from time to time in respect to other business, but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. The Court may direct the jury to bring in a sealed verdict at the opening of the Court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the Court for the term shall discharge the jury. Final adjournment, jury discharged.

1234. SEC. 173. When the jury have agreed upon their verdict, they shall be conducted into Court by the officer having them in charge; their names shall then be called, and they shall be asked by the Court, or the Clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same. Verdict.

1235. SEC. 174. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the Court, or the jury may again be sent out. May be corrected.

1236. SEC. 175. When the verdict is given, and is not informal or insufficient, the Clerk shall immediately record it in full in the minutes, and shall read it to the jury, and inquire of them whether it be their verdict. If more than one fourth of the jurors disagree, the jury shall be again sent out; but if no disagreement be expressed, the verdict shall be complete, and the jury shall be discharged from the case. How recorded.

ARTICLE III.

The verdict.

Verdict, kind of. **1237.** SEC. 176. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict shall present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the Court but to draw from them conclusions of law. (1)

(1) A special verdict must expressly present all the material facts, so that nothing shall remain for the Court but to draw from them the conclusions of law.—Knickerbocker v. Hall, 3 Nev., p. 149.

Same. **1238.** SEC. 177. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the Court may direct the jury to find a special verdict in writing upon all or any of the issues; and, in all cases, may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict of finding shall be filed with the Clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the Court shall give judgment accordingly.

When to find amount of recovery. **1239.** SEC. 178. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counterclaim for the recovery of money is established exceeding the amount of the plaintiff's claim, as established, the jury shall also find the amount of the recovery. (2)

(2) In all actions for the recovery of money, the jury should always find the amount which the successful party is entitled to recover. A mere finding for the plaintiff, without assessing the sum to be recovered, is not sufficient. As the value of the property at the time of the conversion is not the true measure of damage, a general finding of its value is not a sufficient assessment of the sum of money to be recovered by the successful party in an action for the wrongful conversion of such property.—Knickerbocker v. Hall, 3 Nev., p. 149.

In action to recover specific property. **1240.** SEC. 179. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may, at the same time, assess the damages, in gold coin, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

1241. SEC. 180. Upon receiving a verdict, an entry shall be made by the Clerk in the minutes of the Court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it. **Entry in minutes.**

CHAPTER 5.—TRIAL BY COURT.

1242. SEC. 181. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, and, with the assent of the Court, in other actions, in the manner following: First—By failing to appear at the trial. Second—By written consent, in person or by attorney, filed with the Clerk. Third—By oral consent in open Court, entered in the minutes. **Jury trial may be waived.**

1243. SEC. 182. Upon the trial of an issue of fact by the Court, its decision shall be given in writing and filed with the Clerk, within ten days after the trial took place. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly. **Decision of Court.**

1244. SEC. 183. On a judgment upon an issue of law, if the taking of an account be necessary to enable the Court to complete the judgment, a reference may be ordered. Chancery cases may be tried by the Court, with or without the finding of a jury, upon issues formed by the Court. (1) **Chancery cases.**

(1) JUDGEMENT FOR DEFENDANT "NON OBSTANTE VEREDICTO," ERROR.—When there was a verdict for plaintiff, and defendant moved for judgment *non obstante veredicto* and obtained it: *Held*, that such a motion, if allowable at all under the Practice Act, was only a motion for plaintiff, and that the action of the Court was erroneous.—Brown and Eagers v. Lillie, 6 Nev., p. 177.

MOTION FOR JUDGMENT "NON OBSTANTE VEREDICTO." A motion for judgment *non obstante veredicto*, if proper at all under the Practice Act, can certainly not be made by defendant.—Id.

NO LEGAL JUDGMENT ON VERDICT IRRESPONSIVE TO PLEADINGS.—If a verdict is absolutely defective under the pleadings, no legal judgment can be entered thereon.—Id.

When a case is tried before a Court without a jury, and one of the facts found by the Judge, and the very one on which the case, in his opinion, turns, is wholly unsupported by evidence, this Court will not treat this particular finding as surplusage, in order to sustain the judgment on other findings, especially if the weight of testimony is against the other findings on which respondents seek to sustain the judgment.—Lockhart v. Mackie, 2 Nev., p. 294.

TRIAL BY COURT—FINDINGS EQUIVALENT TO VERDICT. Where a cause is tried by a Court without a jury, the same weight and consideration is given to its findings as to a verdict; and the same rules apply as to reversing them on appeal on the ground of being contrary to evidence, as to a verdict of the jury.—State v. Yellow Jacket M. Co., 5 Nev., p. 415.

When a finding of facts is defective, it must be excepted to in the Court below, or this Court will not reverse the case for such defect.—Whitmore v. Shivick, 3 Nev., p. 288.

FINDINGS, WHAT NEED NOT CONTAIN.—It is not necessary for a Court to find a fact which is admitted in the pleadings. Virgin v. Brubaker, 4 Nev., p. 31.

OBJECTIONS TO FINDINGS.—Objections that findings are not sufficiently specific, and that some of them are conclusions of law instead of findings of fact, cannot be made available on appeal, unless application to correct or amend them is shown to have been made in the Court below.—State v. Manhattan Co., 4 Nev., p. 318.

PRACTICE ACT, SECTIONS ONE HUNDRED AND EIGHTY-TWO AND THREE HUNDRED AND FORTY—"WRITTEN DECISION" AND "WRITTEN OPINION."—The "written decision" referred to in section one hundred and eighty-two of the Practice Act, is something which must precede the judgment, and upon which it is entered, and is different from the "written opinion" referred to in section three hundred and forty.—Corbett v. Job, 5 Nev., p. 201.

When there are two distinct defenses, it is not the proper practice to impanel one jury to try the equitable defense, and another the legal defense. It is, however, proper to keep the two defenses separate. The Judge himself may first hear and determine the equitable side of the case; or, if in doubt, he may submit special issues to the jury who are to try the law side of the case.—Low v. Crown Point, 2 Nev., p. 75.

CHAPTER 6.—OF REFERENCES AND TRIAL BY REFEREE.

Order of reference. 1245. SEC. 184. A reference may be ordered upon the agreement of the parties, filed with the Clerk, or entered in the minutes: First—To try any or all of the issues in an action or proceeding whether of fact or of law, and to report a judgment thereon. Second—To ascertain a fact necessary to enable the Court to proceed and determine the case.

Same. 1246. SEC. 185. When the parties do not consent, the Court may, upon the application of either, or of its own motion, direct a reference in the following cases: First—When the trial of an issue of facts requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein. Second—When the taking of an account is necessary for the information of the Court before judgment, or for carrying a judgment or order into effect. Third—When a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of the action; or, Fourth—When it is necessary for the information of the Court in a special proceeding.

1247. SEC. 186. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the Court or Judge shall appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection. **Number of persons to whom ordered.**

1248. SEC. 187. Either party may object to the appointment of any person as referee on one or more of the following grounds: First—A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second—Consanguinity or affinity within the third degree to either party. Third—Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party. Fourth—Having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause. Fifth—Interest on the part of such person in the event of the action, or in the main question involved in the action. Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh—The existence of a state of mind in such person evincing enmity against or bias to either party. **Referees, objection to appointment.**

1249. SEC. 188. The objections taken to the appointment of any person as referee shall be heard and disposed of by the Court. Affidavits may be read and any person examined as a witness as to such objections. **Objections, how disposed of.**

1250. SEC. 189. The referees shall make their report within ten days after the testimony before them is closed. Their report upon the whole issue shall stand as the decision of the Court, and upon filing the report with the Clerk of the Court, judgment may be entered thereon in the same manner as if the action had been tried by the Court. The decision of the referees may be excepted to and reviewed in like manner as if made by the Court. When the reference is to report the facts, the report shall have the effect of a special verdict. **Report of referees.**

CHAPTER 7.—GENERAL PROVISIONS RELATING TO TRIALS.

ARTICLE I.

Exceptions.

1251. SEC. 190. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, Court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury, or at any other time from the calling **Exceptions defined.**

of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties. (1)

(1) Bills of exception must be signed by the Judge who tried the cause. The signature of one who does not appear as counsel of record in the Court below—when it does not appear whether such signature was obtained to witness the fact that the statement was correct, or merely to admit service of statement—cannot be received as a substitute for bill of exceptions. People v. Gleason, 1 Nev., p. 173.

ENTRIES IN ACCOUNT BOOKS.—Where, in a suit on an account, the entries in plaintiff's books were received in evidence without objection, and the Court charged that, having been thus received, they were proof, if uncontradicted, to show the transactions and prices therein entered: *Held*, that though such entries might have not been admissible if objected to at the time, yet, under the circumstances, the charge was correct.—Sherwood v. Sissa, 5 Nev., p. 349.

EVIDENCE ADMITTED WITHOUT OBJECTION.—If evidence, secondary or hearsay in its character, be admitted without objection, no advantage can be taken of that fact afterward, and the jury may and should accept it as if it were admissible under the strictest rules of evidence.—Id.

STOCK-BROKERAGE—WAIVER OF DELIVERY OR TENDER.—Where a broker buys stock for his principal, and the principal before receiving it orders the broker to sell it again on the principal's account, this amounts to a waiver of any delivery or tender of the stock by the broker to the principal.—Cahill v. Hirschman, 6 Nev., p. 57.

BOOKS OF ACCOUNT—LEDGER AS EVIDENCE.—A stock broker's ledger is not a book of original entry, and is not competent to prove an original purchase or transaction; but it is competent testimony in rebuttal in explanation of a bill sent by the broker to the principal, and to supplement the broker's own testimony that such bill was not general, as claimed, but only a partial bill.—Id.

EVIDENCE OF SALES OF STOCK FOR ASSESSMENTS.—An indorsement by the Secretary of a company on a certificate of stock, to the effect that the same had been sold for assessments, as well as evidence that the Secretary had made statements to the same effect, is mere hearsay, and not competent to prove the fact of any sale for assessments.—Id.

IRREGULARITIES OF PRACTICE NOT OBJECTED TO.—Though the proceedings of a District Court are plainly irregular in point of practice, yet if no objection be made on that ground, such irregularity will not be considered in the Supreme Court. Fitzpatrick v. Fitzpatrick, 6 Nev., p. 63.

RELEVANCY OF EVIDENCE TENDING TO SUPPORT DEFENSE. On a trial against the sureties on the official bond of a State Treasurer, to recover for defalcation claimed to have taken place within the period covered by the instrument, it is competent for defendant to show that the defalcation occurred previous to the giving of the bond, and any testimony tending to support such defense is relevant and pertinent. — State v. Rhoades, 6 Nev., p. 352.

EXCLUSION OF RELEVANT TESTIMONY ERROR.—Where, in an action against the sureties on the official bond of a State Treasurer for defalcation, defendants' counsel asked a witness as to the condition of the treasury at a time previous to that covered by the bond; and upon objection, on the ground of irrelevancy, counsel stated that he proposed to show that the defalcation complained of took place before the bond was given, and that to show such fact it was necessary to show the condition of the treasury as asked: *Held*, that the exclusion of the question and proposed testimony was error.—Id.

STATEMENT OF COUNSEL TO SHOW RELEVANCY OF TESTIMONY.—Where a defendant asked a witness a question which, under the pleadings, appeared directed to proof of irrelevant matter, and upon objection made on that ground, counsel stated the character of his defense, and it appeared that the proposed defense was admissible, and the question one the answer to which might tend to support it: *Held*, that the proposed testimony was relevant, and the exclusion of the question error.—Id.

TEST OF RELEVANCY OF EVIDENCE.—To ascertain whether evidence be relevant or not, it is only necessary to determine whether it has a tendency to establish a legitimate case or defense relied on.—Id.

INTIMATIONS OF COURT EXCLUDING EVIDENCE.—Where a witness was called for the purpose of proving a certain fact, and the Court, in ruling out a question in any way calculated to elicit testimony to establish it, informed counsel that proof of such fact would not be admitted: *Held*, that the action of the Court was to be treated as a decision ruling out evidence of such fact, and that it was unnecessary for counsel to persist in efforts to prove it.—Id.

OBJECTIONS TO EVIDENCE TO BE MADE PROMPTLY.—An objection to the admission of evidence should always be made at the earliest opportunity after the objection becomes apparent; if apparent when offered, it should be made then; if the evidence, apparently admissible when offered, is shown by subsequent developments to be exceptionable, the objection should then be made in the form of a motion to strike out.—Sharon v. Minnock, 6 Nev., p. 377.

FAILURE TO OBJECT TO WANT OF PROOF WHEN WAIVER OF PROOF.—Where a deed purporting to be that of a corporation was permitted to be introduced in evidence, without any objection, at the time, that the seal had not been proved, nor any authority to affix it shown: *Held*, a waiver of such proof.—Id.

OBJECTIONS TO ADMISSION OF EVIDENCE TOO LATE AFTER EVIDENCE ADMITTED.—Where a deed was admitted in evidence under insufficient objections to its validity for alleged want of title in the grantor, and afterwards, on motion for nonsuit, further grounds of exception on account of its alleged want of proper execution were made to it: *Held*, that the latter objections were too late, and therefore not available.—Id.

OBJECTIONS AS TO RIGHT TO EXECUTE DEED NOT OBJECTION AS TO EXECUTION.—Where the only specification of objection to the introduction in evidence of a deed was that the alleged grantor, a corporation, had not been shown to have title: *Held*, not broad enough to cover an objection that the corporate seal had not been proved, nor any authority shown to affix it to the deed.—Id.

PARTICULAR GROUND OF EXCEPTION TO BE STATED.—The particular ground of an objection or exception taken in the course of a trial is required to be stated (Practice Act, Sec. 191), so that the Court may decide intelligently upon it, and the opposite party ~~be afforded~~ an opportunity of obviating the objection, if it be in his power to do so.—Id.

How taken. 1252. SEC. 191. The point of the exception shall be particularly stated, and may be delivered in writing to the Judge, or, if the party require it, shall be written down by the Clerk. When delivered in writing or written down by the Clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. When not delivered in writing or written down as above, it may be entered in the Judge's minutes and afterwards settled in a statement of the case, as provided in this Act; *provided*, that if the Judge shall in any case refuse to allow an exception in accordance with the facts, any party aggrieved thereby may petition the Supreme Court for leave to prove the same, and shall have the right so to do, in such mode and manner and according to such regulations as the Supreme Court may by rules impose, and such exceptions as are allowed by said Supreme Court shall become a part of the record of the cause.

Same. 1253. SEC. 192. No particular form of exception shall be required; the objection shall be stated with so much of the evidence, or other matter, as is necessary to explain it, but no more, and the whole as briefly as possible.

When implied. 1254. SEC. 193. When a cause has been tried by the Court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

ARTICLE II.

New trials.

New trial. 1255. SEC. 194. A new trial is a reëxamination of an issue of fact in the same Court after a trial and decision by a jury, Court, or referees.

1256. SEC. 195. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party: First—Irregularity in the proceeding of the Court, jury, or adverse party, or any order of the Court or abuse of discretion by which either party was prevented from having a fair trial. Second—Misconduct of the jury. Third—Accident or surprise which ordinary prudence could not have guarded against. Fourth—Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial. Fifth—Excessive damages, appearing to have been given under the influence of passion or prejudice. Sixth—Insufficiency of the evidence to justify the verdict or other decision, or that it is against law. Seventh—Error in law occurring at the trial and excepted to by the party making the application. (1) **For what cause granted.**

(1) That only is cumulative evidence which is in addition to or corroborative of what has been given at the trial. To render evidence subject to this objection, it must be cumulative, not with respect to the main issue between the parties, but upon some collateral or subordinate fact bearing upon that issue.—Gray v. Harrison, 1 Nev., p. 502.

If the newly discovered evidence brings to light some new fact bearing upon the main question, and it would be likely to change the result, a new trial should be granted.—Id.

The method of making and settling statements on motion for new trial commented on.—Levy v. Fargo, 1 Nev., p. 417.

When notice of intention to move for new trial is served within two days after judgment, and followed up by statement, etc., as the statute prescribes, the Court retains jurisdiction of the case so far as to be able to dispose properly of the motion for new trial, although the Court may have adjourned for the term between the day judgment was rendered and the filing of notice, without making any order containing the jurisdiction over the case.—Killip v. Empire Mill Co., 2 Nev., p. 34.

But if the term expires, and no notice of intention to move for a new trial is filed within the statutory time, then the Court loses jurisdiction of the case.—Id.

A mere verbal notice, given out of Court in conversation with counsel of the successful party, that a new trial will be moved for, is not sufficient. It must be in writing, or in open Court, and a minute made of it.—Id.

The facts in this case do not show any waiver of service of the notice.—Id.

It is not the duty of counsel to inform their opponents that they are about to omit some steps in the proper management of their side of the case.—Id.

The Court, having lost jurisdiction of the case by the lapse of time, and the failure of respondent to file notice of intention to move for new trial within two days after judgment, could not restore its jurisdiction by an order allowing the notice to be filed *nunc pro tunc* as of a former day.—Id.

Could the Court have made such an order even during the continuance of the term at which the judgment was rendered? *Quere.*—Id.

When a party applies for a new trial on the ground of surprise, he must show that he has evidence which, if introduced on a second trial, will probably change the result; or at least has evidence tending to rebut the point made by the other side which he complains of as a matter of surprise.—McClusky v. Gerhauser, 2 Nev., p. 47.

To justify a new trial on the ground of newly discovered evidence, three things must be shown: first, materiality of evidence; second, it could not by due diligence have been produced at the first trial; third, that it is not cumulative.—Howard v. Winters, 3 Nev., p. 539.

To justify the granting of a new trial on the ground of newly discovered evidence, the party applying for the relief should show clearly that the failure to produce evidence on the first trial was not the result of negligence on his part.—Id.

NEW TRIAL, WHEN IMPROPER.—When a judgment and verdict are in accordance with the evidence, and there is no substantial conflict in it upon any material issue, and no error has intervened, the Court has no right to grant a new trial; and if it do so, its order will be set aside as unauthorized.—Lawrence v. Burnham, 4 Nev., p. 361.

NEW TRIAL NOT AUTHORIZED EXCEPT FOR ERROR.—A verdict or other decision cannot be set aside where no irregularity or error whatever is shown, and the verdict or decision is in accordance with and justified by the evidence.—Scott v. Hains, 4 Nev., p. 426.

NO NEW TRIAL WHERE NO CAUSE OF ACTION.—Where an action was brought by an assignee to recover certain claims for work, labor, and services, and there was a judgment for defendant, and in his statement on motion for new trial the plaintiff showed that he had failed to prove that his assignors had ever performed work, labor, or services, or that any sum was due to them or him: *Held*, that the allowance of a new trial upon any ground was entirely unauthorized, beyond the power of the Court, and erroneous.—Id.

DISTINCTION AS TO WEIGHT OF EVIDENCE ON NEW TRIAL AND ON APPEAL.—The rule that a verdict should not be reversed as against evidence by an appellate Court, where there is a material conflict in the testimony, and there is some substantial evidence to support it, does not apply with strictness to motions for new trial; and it is generally held that on such motions, to authorize the *nisi prius* Judge to set aside a verdict, the weight of evidence against the verdict need not be so decided and great as is required by an appellate Court to reverse it.—State v. Yellow Jacket, 5 Nev., p. 415.

WHEN A VERDICT WILL BE REVERSED AS AGAINST EVIDENCE.—To justify an appellate Court in reversing the verdict of a jury on the ground that it is against evidence, there must be a preponderance of evidence against it so great as to satisfy the Court that there was either an absolute mistake on the part of the jury, or that they acted under the influence of prejudice, passion, or corruption.—Id.

The use of intoxicating liquor by a juror during the progress of a trial, or after the case has been submitted, unless furnished by the party in whose favor the verdict is given, or unless it is shown that intoxicating effects were produced, is no ground for setting aside the verdict or awarding a new trial.—Richardson v. Jones & Denton, 1 Nev., p. 405.

Every irregularity on the part of a jury does not authorize the verdict to be set aside, unless the party complaining shows, by reasonable presumption at least, that he has been injured thereby.—Id.

When the verdict of a jury contains surplus matter, the Court ought not, for that reason, to set it aside and grant a new trial, unless it appears from that surplus matter that the jury based their verdict on absurd reasoning or false premises.—Gregory v. Frothingham, 1 Nev., p. 253.

A verdict will not be set aside merely because it is against the weight of evidence.—Bryant v. Carson Lumbering Co., 3 Nev., p. 313.

WHAT TAMPERING WITH JURY AVOIDS VERDICT.—The rule that a verdict in favor of a party who treats or entertains the jury will be set aside applies to any treating of any of the jury at any time after they are sworn and before they agree upon their verdict, whether once or several times, by design or inadvertently, in the presence of the officer or in his absence, and whether it might be called for or uncalled for by the proprieties of life.—Sacramento and Meredith Mining Company v. Showers, 6 Nev., p. 291.

NEW TRIALS NOT MATTERS OF DISCRETION.—The granting or refusing a new trial is not a matter of mere discretion.—Id.

"TREATING THE JURY" CAUSE OF REVERSAL.—Where, during the progress of a trial and before retiring to deliberate, and while under charge of an officer for the purpose of viewing the ground in controversy, the jury went into a saloon and drank liquor at the expense of the prevailing party: *Held*, that the verdict and judgment thereon should be set aside.—Id.

Application, how made.

1257. SEC. 196. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it shall be made upon affidavit; for any other cause, it shall be made upon a statement prepared as provided in the next section.

Prerequisites to motion for.

1258. SEC. 197. The party intending to move for a new trial shall give notice of the same as follows: When the action has been tried by a jury, within five days after the rendition of

Same. the verdict, and when the action has been tried by the Court or by a referee, within ten days after receiving written notice of the rendering of the decision of the Judge, or of the filing the report of the referee. The notice shall designate generally the grounds upon which the motion will be made. Within five days after giving such notice the said party shall prepare and file with the Clerk the affidavit or statement required by the last section. A copy of the affidavit shall on the same day be served on the adverse party. The party preparing the statement shall number the pages and lines thereof, and after having filed the same with the Clerk, and had such filing entered and indorsed, shall serve the same on the adverse party on the same day, who may propose amendments thereto, referring to the page and line of the statement, and shall, within five days after the service on him of the statement, file his amendment with the Clerk, and after having such filing entered and indorsed, shall on the same day serve the same, with the statement, upon the moving party, who shall within five days thereafter give written notice to the adverse party if he declines admitting the amendments, or they shall be deemed accepted. At any time thereafter either party may have the statement settled by the Judge or referee upon two days' notice thereof to the other party. If no affidavit or statement be filed within five days after the notice for a new trial, the right to move for a new trial shall be waived. When the notice designates, as the ground upon which the motion will be made, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion, error in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded. The statement shall contain so much of the evidence or reference thereto as may be necessary to explain the particular points thus specified, and no more. When the statement is agreed to, it shall be accompanied with the certificate, either of the parties themselves in fact or their attorney, that the same has been agreed upon and is correct. When settled by the Judge or referee, it shall be accompanied with his certificate that the same has been allowed by him and is correct. When no amendments have been filed, the statement shall be accompanied with the certificate of the Clerk of that fact. On the argument, reference may also be made to the pleadings, depositions, and documentary evidence on file, testimony taken and written out by a short-hand reporter authorized by the Court to take the same, and the minutes of the Court. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter affidavits shall be filed with the Clerk, and copies served on the moving party, at least two days previous to the hearing. The affidavits and counter affidavits, or the statement thus used in connection with such pleadings, depositions, documentary evidence on file, testimony taken by a reporter, and minutes of the Court as are read or referred to on the hearing, shall constitute, without further statement, the papers to be used on appeal from the order granting or refusing the new trial. To identify the affidavits, it shall be sufficient for the Judge or Clerk to indorse them at the time as having been read or referred to on the hearing. To identify any depositions, documentary evidence on file, testimony taken by a reporter, or minutes of the Court read or referred to on the hearing, it shall be sufficient that the Judge designate them as having been read or referred to in his certificate to be for that purpose by him made thereon. The several periods of time limited may be enlarged by the written agreement of the parties, or, upon good cause shown, by the Court or the Judge before whom the cause was tried. (¹) Same.

(1) KILLIP v. EMPIRE MILL COMPANY, 2 Nev., p. 34, as to the necessity of both notice and statement on motion for new trial within due time, to continue jurisdiction in the Court beyond the term, approved.—State v. First National Bank, 4 Nev., p. 358.

STATEMENT OR AFFIDAVITS INDISPENSABLE ON MOTION FOR NEW TRIAL.—A notice of motion for new trial given in due time, if followed by a statement or affidavits in due time, will continue the jurisdiction of the District Court over its judgment beyond the term; but if the notice and statement are not both made in due time, the Court loses its jurisdiction at the end of the term, and it cannot thereafter set aside the judgment, even though clearly erroneous.—Id.

STATEMENT ON NEW TRIAL—SPECIFICATION OF INSUFFICIENCY OF EVIDENCE.—On motion for new trial on the ground of insufficiency of the evidence, it is indispensable in the statement to designate the particulars in which the insufficiency consists.—Caldwell v. Greely, 5 Nev., p. 258.

ERRORS OF LAW TO BE POINTED OUT IN STATEMENTS.—A statement on motion for new trial on the ground of errors in law, must particularly designate the errors relied on, otherwise it will be disregarded.—Id.

FATAL DEFECTS IN STATEMENTS ON NEW TRIAL.—If a statement on motion for new trial, on the grounds of insufficiency of evidence and errors in law, fail to specify the particulars in which the evidence is insufficient, and the particular errors in law relied on, an order denying such motion will not be disturbed in the appellate Court, nor will any inquiry be made into the merits of the motion.—Id.

When a case comes up on statement for a new trial, which has never been settled by the Court or agreed to by the parties, this Court cannot look into the evidence and other matters set out in the statement; it will be confined to an examination of the judgment roll.—Lockwood vs. Marsh, 3 Nev., p. 138.

When a party, in assigning errors, or stating the grounds on which he will move for a new trial, says that the Court erred in doing a certain thing, this is no evidence that the Court did as charged. To establish that fact, it must appear in the statement of facts. The assignment of errors, and the statement of the facts or evidence to sustain these alleged errors, are separate and distinct things. The party moving for a new trial may state the errors complained of in his own language. Neither the Court nor the opposite party can correct that. The Court can only correct the statement of facts or evidence.—Fleeson v. Savage Min. Co., 3 Nev., p. 157.

The admission by respondents' attorney that a statement on motion for new trial is correct, does not admit such statement to contain all the evidence offered in the case, where the statement itself does not purport to contain it all. It can only be held to be an admission that so far as the evidence is stated, it is stated correctly. It does not negative the idea of other evidence having been given.—Howard et al. v. Winters et al., 3 Nev., p. 539.

PER BEATTY, C. J.—When the particular point on which there is claimed to be a defect of evidence is stated in the motion for a new trial, and an attempt made to state the evidence bearing on this point, and that statement is submitted to the opposite party, who either amends or agrees to the statement as made, the Court should give a liberal construction to the statement and presume it contains all that either party considered material in regard to that particular point.—Id.

STATEMENT FOR NEW TRIAL—SPECIFICATION OF ERROR. In a statement on motion for a new trial, which contains the charge of the Judge as an entirety, a specification of error, "that the Court erred in giving to the jury the instructions as set forth in this statement," is sufficient.—Ellis v. C. P. R. R. Co., 5 Nev., p. 255.

AMENDMENTS SHOULD BE LIBERALLY ALLOWED.—Courts should be liberal in allowing amendments to defective statements on motion for new trial, etc., and should themselves suggest them whenever a defect or deficiency is apparent.—Caldwell v. Greely, 5 Nev., p. 258.

NEW TRIAL—SPECIFICATION OF "ERRORS IN LAW."—Where a motion for new trial is made upon the sole ground of "errors in law occurring at the trial," and the statement contained no specification of the particular errors relied on: *Held*, that the granting of a new trial was error.—McWilliams v. Hirschman, 5 Nev., p. 263.

DEFECTIVE STATEMENTS ON NEW TRIAL.—A statement on motion for new trial on the sole ground of errors in law, which contains no specification of particular errors, as required by Sec. 197 of the Practice Act, is virtually no statement, and a Court has no more right to grant a new trial on such a statement than if there were no statement at all.—Id.

WAIVER OF ERRORS TO BE SHOWN BY PARTY CLAIMING WAIVER.—It is incumbent upon a party who wishes to avoid the consequence of error in legal proceedings upon the ground of waiver by the opposite party, to show such waiver—not upon the party insisting on the error to establish that he did not waive it.—Id.

Hoopes v. Meyer, 1 Nev., p. 443, and Gillig, Mott & Co. v.

The Lake Bigler Road Company, 2 Nev., p. 214, on the point that a statement is not required to specifically state the errors relied on, disapproved.—Corbett v. Job, 5 Nev., p. 210.

APPEAL—WANT OF AUTHENTICATION OF STATEMENT ON NEW TRIAL.—Papers purporting to be a statement and affidavits on motion for a new trial, if they are not authenticated or identified in the manner provided by statute (Stats. 1869, p. 226), cannot be considered in the Supreme Court, and should be stricken out on motion made therefor.—White v. White, 6 Nev., p. 20.

AUTHENTICATION OF STATEMENT ON NEW TRIAL.—Where a statement on motion for new trial is not authenticated in the mode prescribed by statute, it is a good ground for denying the motion.—Id.

PRESUMPTION AGAINST WAIVER OF ERRORS.—It is always the duty of the person wishing to avoid the consequences of error in legal proceedings, upon the ground of waiver by the opposite party, to show such waiver, and not of the person insisting on the error to establish that it was not waived.—Id.

ISSUES ON APPEAL FROM NEW TRIAL ORDER.—The purpose of the legislative provisions in relation to appeals from orders on motions for new trials, is to allow all points which could be urged in the Court below, either for or against the motion for new trial, to be raised on the appeal from the order granting or refusing it, without any further statement.—Id.

NAMING A PAPER NOT INDORSING ITS CORRECTNESS AS SUCH.—A stipulation reciting the papers by name which the transcript on appeal should contain, and among others the "Statement on New Trial," is not a waiver of objections that the paper purporting to be such statement is not properly authenticated, and therefore not a statement.—Id.

MOTION FOR NEW TRIAL—WAIVER OF NOTICE OF DECISION.—Though a party in cases tried by the Court is not required to move for a new trial until "ten days after receiving written notice of the rendering of the decision of the Judge," yet if he proceed in the case upon actual knowledge of such decision, he waives his right to written notice.—Corbett v. Swift, 6 Nev., p. 194.

TIME TO MOVE FOR NEW TRIAL—PRACTICE ACT, SEC. 197. Under Sec. 197 of the Practice Act, a party in a case tried by the Court has "ten days after receiving written notice of the rendering of the decision of the Judge" to move for a new trial, and as long as he does not act, waiving his right, no advantage can be taken of the fact that he has had actual knowledge.—Id.

WAIVER OF RIGHT TO MOVE FOR A NEW TRIAL.—Where a party in a case tried by the Court appealed from a judgment without the preliminary step of moving for a new trial: *Held*, that he thereby waived such motion, and could not afterwards take advantage of the fact that he had received no written notice of the rendering of the decision of the Judge.—Id.

Application, when to be made. 1259. SEC. 198. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement, and the Court or Judge granting or refusing a new trial shall state in writing generally the grounds upon which the same is granted or refused.

CHAPTER 8.—THE MANNER OF GIVING AND ENTERING JUDGMENT.

Judgment, how and when entered. 1260. SEC. 199. When trial by jury has been had, judgment shall be entered by the Clerk in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the Court order the case to be reserved for argument or further consideration, or grant a stay of proceedings. (1)

(1) The proper practice in entering judgments is for the Clerk to enter the same within twenty-four hours after verdict, or order of Court for judgment, leaving a blank for costs. If the cost bill is filed within two days after the verdict, or order for judgment, the Clerk must fill the blank; otherwise it will always remain blank.—Howard v. Richards & Richards, 2 Nev., p. 128.

When the blank is filled up it must be considered as of the date of the judgment, and the judgment itself may, by relation, be considered as of the date of the decree for judgment. Id.

In this case the judgment must be considered as of the date of the eighteenth of December, when the order for judgment was made; and it should have been entered up on that or the following day.—Id.

Argument of case. 1261. SEC. 200. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the Court for argument.

Counterclaim. 1262. SEC. 201. If a counterclaim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Action for recovery of personal property. 1263. SEC. 202. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention or the value of the use thereof. (2) If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same, or the value of the use thereof. In an action on a contract or obligation for the direct payment of money, payable in a specified or agreed kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the Court or referee, may follow the contract or obligation, and be made payable in the kind of money or currency therein specified or thereby agreed. And in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the Court or referee, may be made payable in the same kind of money or currency so received by such person; and in all cases of damage the judgment shall be for gold coin.

> (2) In an action of replevin, the judgment must be for the return of the property and an alternative judgment for its value if not returned. An absolute judgment for its value, not allowing defendant to satisfy the judgment by return of the property with costs and damages, is erroneous.—Lambert v. McFarland, 2 Nev., p. 58.
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> CLAIMS FOR DAMAGES NOT DEBTS PAYABLE IN CURRENCY.—A claim for damages is not (any more than a tax) a "debt" within the meaning of the Act of Congress relating to treasury notes, and the Legislature might therefore provide that a judgment therefor should be in gold coin, and not to be satisfied by payment in legal tender currency.—Clark v. Nevada L. & M. Co., 6 Nev., p. 203.
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> GOLD COIN JUDGMENTS FOR DAMAGES.—Under Sec. 202 of the Practice Act (Stats. 1869, p. 228), a judgment in gold coin for damages is proper.—Id.

1264. SEC. 203. The Clerk shall keep among the records of the Court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action. **Judgment book.**

1265. SEC. 204. If a party die after a verdict or decision upon any issue of fact, and before judgment, the Court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate. **Death of party.**

1266. SEC. 205. Immediately after entering the judgment the Clerk shall attach together and file the following papers, which shall constitute the judgment roll: First—In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with the memorandum indorsed on the complaint that the default of the defendant in not answering was entered, and a copy of the judgment. Second—In all other cases the summons, pleadings, and a copy of the judgment, and any orders relating to a change of the parties. **Judgment roll.**

1267. SEC. 206. Immediately after filing a judgment roll the Clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him, and from the time the judgment is docketed it shall become a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he **Lien of judgment.**

may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal or action of the Court or defendant shall not be computed. (1)

(1) *Query:* If a judgment lien lacks only a few days of expiring by lapse of time when a levy is made thereunder on real estate, can the levy so extend the lien as to make a valid sale thereunder which will defeat a title acquired by a stranger to the judgment prior to the issuance of the execution?—Easterbrook v. Upton, 1 Nev., p. 398.

Docket. how kept.

1268. SEC. 207. The docket mentioned in the last section is a book which the Clerk shall keep in his office, with each page divided into columns: Judgment debtors; judgment creditors; judgment; time of entry; where entered in judgment book; appeals; when taken; judgment of appellate Court; satisfaction of judgment; when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

To be open for inspection.

1269. SEC. 208. The docket kept by the Clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the Clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Judgment liens in other counties.

1270. SEC. 209. A transcript of the original docket, certified by the Clerk, may be filed with the Recorder of any other county, and from the time of the filing the judgment shall become a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal, or action of the Court or defendant, shall not be computed.

Duration of lien.

Satisfaction of judgment, how entered.

1271. SEC. 210. Satisfaction of a judgment may be entered in the Clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the Clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor; or within one year after the judgment, by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon execution, it shall be the duty of the party or attorney to give such acknowledgment, and upon motion the Court may compel it, or may order the entry of satisfaction to be made without it. (2)

(2) WHEN JUDGMENT CREDITOR MAY BE ORDERED TO SATISFY JUDGMENT.—It is only when a judgment is satisfied "otherwise than upon execution" (Practice Act, Sec. 210,)

that a Court may order the judgment creditor to make acknowledgment of that fact.—Sweney v. Hawthorne, 6 Nev., p. 129.

MERE STRIKING OFF TO JUDGMENT CREDITOR NOT SATISFACTION OF EXECUTION.—Where, on an execution sale, the judgment creditor bid in the property but refused to pay, and the property had to be offered again: *Held*, that the execution was not satisfied.—Id.

EXECUTION SALE—BID BY JUDGMENT CREDITOR—SATISFACTION.—Where property of a judgment debtor was, on execution sale, struck off to the judgment creditor, and, upon his refusal to pay, the Sheriff proceeded to re-sell, whereupon the Court, on motion, ordered the judgment creditor to enter satisfaction of the judgment: *Held*, that the order was error and must be set aside.—Id.

TITLE VII. (a)

Of the execution of the judgment in civil actions.

CHAPTER 1.—THE EXECUTION.

1272. SEC. 211. The party in whose favor judgment is given, may at any time within five years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter. (1) **Execution may issue.**

(a) All the provisions of this title relative to the duties of the Sheriff upon execution are made applicable to Constables, by Sec. 1621, post.

(1) The execution must be authorized by the judgment, and must follow it in every essential particular, not only as to material matters of form, but also as to the amount for which it is rendered.—Hastings v. Johnson, 1 Nev., p. 613.

If the execution is issued for an amount materially in excess of the judgment, a levy and sale made to satisfy such excess is nugatory and will be set aside upon the application of any person interested, or whose rights have been prejudiced thereby.—Id.

When but one sale of property is made under such an execution and an amount materially exceeding the judgment is realized, the entire proceedings under it are nugatory. But when several levies and sales are made for separate sums, only such sales or levies will be considered void as are made to satisfy the amount in excess of the judgment.—Id.

When the discrepancy between the judgment and the execution is a mere trifle, levy and sale will not be disturbed, but when it is material it cannot be overlooked.—Id.

Only the original claim or demand draws interest after judgment. When, therefore, an execution is issued directing the collection of interest on the interest included in the judgment, and a sale of property is made to satisfy such excess of interest, the sale is nugatory, even against a bona fide purchaser.—Id.

The execution must follow the judgment. So, if the judgment does not award interest, none can be collected. Per BEATTY.—Id.

The Clerk cannot go behind the judgment to see whether a part or the whole of the judgment is to bear interest, nor to see what rate of interest, if any, it is to bear. Per BEATTY.—Id.

DOCKETING PERSONAL JUDGMENT IN FORECLOSURE ACTION.—Under Sec. 204 of the Practice Act [Sec. 204 of the Act of 1861 corresponds with Sec. 206, above], as a general rule, every money judgment may be immediately docketed and thereby become a lien; but such is not the effect of the docketing of a personal judgment in a foreclosure case, for the reason that such judgment is suspended until after the equitable remedy against the mortgaged property is exhausted.—Weil v. Howard, 4 Nev., p. 384.

Form of writ.

1273. SEC. 212. The writ of execution shall be issued in the name of the State of Nevada, sealed with the seal of the Court, and subscribed by the Clerk, and shall be directed to the Sheriff; and shall intelligibly refer to the judgment, stating the Court, the county where the judgment roll is filed, the name of the parties, the judgment, and if it be for money, the amount thereof, and the amount actually due thereon; and if made payable in a specified kind of money or currency, as provided in section two hundred and two, the execution shall also state the kind of money or currency in which the judgment is payable, and shall require the Sheriff substantially as follows: First, if it be against the property of the judgment debtor, it shall require the Sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and, if sufficient personal property cannot be found, then out of his real property; or, if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed; or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the Recorder of such county, stating such day, or at any time thereafter; second, if it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the Sheriff to satisfy the judgment, with interest, out of such property; third, if it be against the person of the judgment debtor, it shall require the Sheriff to arrest such debtor, and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law; fourth, if it be issued on a judgment made payable in a specified kind of money or currency, as provided in section two hundred and two, it shall also require the Sheriff to satisfy the same in the kind of money or currency in which said judgment is made payable, and the Sheriff shall refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution; the Sheriff collecting money or currency in the manner required by this Act shall pay to the plaintiff, or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected; (1) fifth, if it be for the delivery of the possession of real or personal property, it shall require the Sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the Sheriff to satisfy any costs, damages, rents, or profits, recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section. Same.

(1) The Sheriff has no authority to put a party in possession of land not described in complaint or judgment.—Bullion Min. Co. v. Crœsus Co., 2 Nev., p. 168.

When an undivided portion of a tract of land is recovered the Sheriff would not be justified in entirely expelling the tenants who are in possession, if they make no opposition to a joint or common possession by those recovering the judgment.—Id.

1274. SEC. 213. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the Sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served, or who appeared in the action. In other respects the writ shall contain the directions specified in subdivisions one and four of the last section. Judgment on joint contract.

1275. SEC. 214. The execution may be returnable at any time not less than ten nor more than sixty days after its receipt by the Sheriff, to the Clerk with whom the judgment roll is filed. (a) When returnable. J. C.

(a) Secs. 214, 215, and from 217 to 236, both inclusive, are made applicable to Justices' Courts by Sec. 1621, post.

1276. SEC. 215. Where a judgment requires the payment of money, or the delivery of real or personal property, the same shall be enforced in those respects by execution. Payment of money. J. C.

1277. SEC. 216. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced. Where it requires performance of other acts.

1278. SEC. 217. Notwithstanding the death of a party after the judgment, execution thereon may be issued, in case of the death of the plaintiff, the same as if he were living, upon the After death of party. J. C.

application of his executor or administrator, or successor in interest, to the Court in which the judgment was rendered, and in case of the death of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued against such property, in the same manner and with the same effect as if he were still living.

May issue to different counties.

J. C.

1279. SEC. 218. Where the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any county in the State. Where it requires the delivery of real or personal property, it shall be issued to the Sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

Property liable to execution.

J. C.

1280. SEC. 219. All goods, chattels, moneys, and other property, real and personal, of the judgment debtor, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts and credits, and other property not capable of manual delivery, may be attached in execution, in like manner as upon writs of attachment. Gold dust and bullion shall be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property shall not be affected by the execution.

Proceedings when property is claimed by third party.

J. C.

1281. SEC. 220. If the property levied on be claimed by a third person as his property, the Sheriff shall summon from his county six persons qualified as jurors between the parties, to try the validity of the claim. He shall also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the Sheriff, and if their verdict be in favor of the claimant, the Sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the Sheriff, and the witnesses shall be paid by the claimant, if the verdict be against him; otherwise by the plaintiff.

Property exempt from execution.

J. C.

1282. SEC. 221. The following property shall be exempt from execution, except as herein otherwise specially provided: First—Chairs, tables, desks, and books to the value of one hundred dollars belonging to the judgment debtor. Second—Necessary household, table, and kitchen furniture belonging to the judgment debtor, including stove, stovepipe, and stove furniture, wearing apparel, beds, bedding, and bedsteads, and provisions and firewood actually provided for individual or family use sufficient for one month. Third—The farming utensils or implements of husbandry of the judgment debtor; also, two oxen or two horses or two mules and their harness, two cows, and one cart or wagon, and food for such oxen, horses, cows, or mules for one month; also, all seed grain or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value two hundred dollars. Fourth—The tools and implements of a mechanic or artisan necessary to carry on his trade; the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their profession, with their scientific and professional libraries, and the law libraries of an attorney or counselor, and the libraries of ministers of the Gospel. Fifth—The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, windlass, whim, derrick, cars, pumps, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars, and two horses, mules, or oxen, with their harness, and food for such horses, oxen, or mules for one month, when necessary to be used for any whim, windlass, derrick, car, pump, or hoisting apparatus. Sixth—Two oxen, two horses, or two mules, and their harness, and one cart or wagon, by the use of which a cartman, huckster, peddler, teamster, or other laborer habitually earns his living; and one horse, with vehicle and harness or other equipments, used by a physician or surgeon or minister of the Gospel in making his professional visits, and also food for such oxen, mules, or horses for one month. Seventh—One sewing machine, not exceeding in value one hundred and fifty dollars, in actual use by the debtor or his family. Eighth—All fire engines, hooks and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department now existing, or which may be, under the laws of this State, hereafter organized. Ninth—All arms, uniforms, and accouterments required by law to be kept by any person. Tenth—All Court Houses, jails, public offices and buildings, lots, grounds, and personal property; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the Court House, jail, and public offices, belonging to any county of this State; and all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of the fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company now existing, or which may be, under the laws of the State, hereafter organized. Eleventh—No article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon. (a) **Same.**

(a) In proceedings supplementary to execution the earnings of the judgment debtor, not exceeding fifty dollars, for personal services within thirty days, are exempt, if necessary for support of his family.—See Sec. 1306, post.

1283. SEC. 222. The Sheriff shall execute the writ against the property of the judgment debtor by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorneys so much of the proceeds as will satisfy the judgment, or depositing the amount with the Clerk of the Court. Any excess in the proceeds over the judgment and the Sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is **Satisfaction of.** J. C.

sufficient to satisfy the judgment and the Sheriff's fees within the view of the Sheriff, he shall levy only on such part of the property as the judgment debtor may indicate; *provided*, that the judgment debtor may indicate at the time of the levy such part; *and, provided*, that the property indicated be amply sufficient to satisfy such judgment and fees. (1)

(1) There being nothing in the record on which this Court could act in setting aside the alleged sale under an erroneous judgment, the appellant must seek his remedy by motion in the Court below.—Miller v. Cherry, 2 Nev., p. 165.

Sales under a *void judgment* are a nullity. But sales under a judgment merely erroneous are good, and pass the title to the property sold.—Hastings v. Burning Moscow Co., 2 Nev., p. 100.

Whilst the mere reversal of a judgment will not invalidate a sale regularly made, there is no doubt Courts may, under proper circumstances (when the rights of innocent parties are not thereby injuriously affected) set aside such sales.—Id.

Sales made under erroneous judgments will be set aside as far as can be done without injury to third parties.—Id.

When a judgment is reversed, the parties should as near as possible be restored to the condition they were in before error was committed.—Id.

A third party purchasing at a judicial sale, and paying his money, ought as a matter of policy to be protected.—Id.

When the judgment is merely modified, and the plaintiff has been the purchaser of property, it may or may not be necessary or proper to set aside a previous sale.—Id.

The sale in this case should be set aside: first, because there was an irregularity in the judgment which all parties were bound to notice; and second, the plaintiff being the purchaser, the setting of the sale aside only replaces the parties in the position they occupied before error committed.—Id.

Sale of property.

1284. SEC. 223. Before the sale of property on execution, notice thereof shall be given as follows:

First—In cases of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property.

Second—In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place, not less than five nor more than ten days, successively, and, in case of sale on execution issuing out of a District Court, by the publication of a copy of said notice at least once a week, for the same period, in a newspaper, if there be one, in the county. J. C.

Third—In case of real property, by posting a similar notice, particularly describing the property, for twenty days, successively, in three public places of the township or city where the property is situated, and also where the property is to be sold; and also by publishing a copy of said notice once a week, for the same period, in a newspaper, if there be one, in the county; *provided*, that the cost of such publication shall in no case exceed the sum of two dollars and fifty cents per square for the first insertion, and one dollar per square for each subsequent insertion; and, *provided further*, that in any case where the paper authorized by this Act to publish such notice of sale shall neglect or refuse, from any cause, to make such publication, then the posting of notices, as provided in the preceding section of this Act, shall be deemed sufficient notice; *provided further*, notices of the sale of property on execution, upon a judgment for any sum less than five hundred dollars, exclusive of costs, shall be given only by posting in three public places in the county, one of which notices shall be posted at the Court House. [As amended February 21, Stats. 1873, p. 75.] **Same.**

1285. SEC. 224. An officer selling without the notice prescribed by the last section, shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars to the aggrieved party. **Penalty for selling without notice.** J. C.

1286. SEC. 225. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be in view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. All sales of real property shall be made at the Court House of the county in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold. When such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, the Sheriff shall be bound to follow such directions. (a) **Sales, how made.** J. C.

(a) All sales of real property on execution issued out of Justices' Courts shall be made at or upon the property sold.—Sec. 1621, post.

1287. SEC. 226. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property to the highest bidder, after again giving the notice hereinbefore provided; and if any loss be occasioned thereby from the purchaser refusing **Purchaser refusing to pay, property to be sold.** J. C.

to pay his bid, the officer may recover the amount of such loss with costs, for the benefit of the party aggrieved, by motion upon previous notice of five days to such purchaser, before any Court of competent jurisdiction.

Proceedings to enforce payment of loss of resale.

1288. SEC. 227. Such Court shall proceed in a summary manner in the hearing and disposition of such motion, and give judgment and issue execution therefor forthwith, but the refusing purchaser may claim a jury. And the same proceedings may be had against any subsequent purchaser who shall refuse to pay, and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

J. C.

PAYMENT ON PURCHASE BY JUDGMENT CREDITOR.—Where the judgment creditor is the purchaser at execution sale, it does not follow that he need not pay any money—the officer may require payment when fees are due, or to become due to him, and in default of payment may resell.—Sweeny v. Hawthorne, 6 Nev., p. 129.

PURCHASE WITHOUT PAY BY JUDGMENT CREDITOR AT EXECUTION SALE.—When a judgment creditor, to whom property is struck off at execution sale, refuses to consummate his purchase, there should be a resale under the provisions of sections two hundred and twenty-six and two hundred and twenty-seven of the Practice Act, the same as in the case of any other purchaser.—Id.

Amount for which officer is liable.

1289. SEC. 228. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

J. C.

Certificate of sale, etc.

1290. SEC. 229. When the purchaser of any personal property capable of manual delivery shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest which the debtor had in and to such property on the day the execution was levied.

J. C.

Same.

1291. SEC. 230. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title, and interest which the debtor had in and to such property on the day the execution was levied.

J. C.

Sale of real estate, when absolute.

1292. SEC. 231. Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases the real property shall be subject to redemption, as provided in this chapter. The officer shall give to the purchaser a certificate of the sale containing: First—A particular description of the real property sold. Second—The price bid for each distinct lot or parcel. Third—The whole

J. C.

price paid. Fourth—When subject to redemption it shall be so stated; and when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate shall also state the kind of money or currency in which such redemption may be made, which shall be the same as that specified in the judgment. A duplicate of such certificate shall be filed by the officer in the office of the County Recorder of the county.

When subject to redemption

1293. Sec. 232. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons, or their successors in interest: First—The judgment debtor, or his successor in interest, in the whole or any part of the property. Second—A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

J. C.

Redemption, how made.

1294. Sec. 233. The judgment debtor or a redemptioner may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, in the kind of money or currency specified in the judgment, if any be specified, with eighteen per cent thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of a redemptioner other than the judgment under which the purchase was made, the amount of such lien, with interest.

J. C.

Same.

1295. Sec. 234. If the property be so redeemed by a redemptioner, either the judgment debtor or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent thereon in addition, and the amount of any assessments or taxes which the said last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and, in addition, the amount of any liens, held by said last redemptioner prior to his own, with interest; *provided*, that the judgment under which the property was sold need not be paid as a lien. The property may be again, and as often as the debtor or a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, with four per cent thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner previous to his own, with interest. Notice of redemption shall be given to the Sheriff. If no redemption be made within six months after the sale, the purchaser or his assignee shall be entitled to a conveyance, or if the property be so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption shall have expired, the last redemptioner or his assignee shall be entitled to the

J. C.

Sheriff's deed. (1) If the debtor redeem at any time before the time for the redemption expires, the effect of the sale shall be terminated and he be restored to his estate.

(1) One who brings an action to recover real estate purchased under execution cannot show that the execution issued under a different judgment than the one recited on its face, nor can he contradict the recitals in the deed under which he claims.—Zabriskie v. Mead et al., 2 Nev., p. 285.

If a defendant in execution has no title to premises in question, either at the date of sale, or at any time subsequent to the period when the judgment was rendered, as appears by the recitals in the execution, in the advertisement of sale, in the certificate of sale, and the Sheriff's deed, a party claiming under such execution sale will not be allowed to show that the true date of the judgment under which the execution was issued was different from all those recitals.—Id.

Same. 1296. SEC. 235. The payment mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale; and a tender of the money shall be equivalent to payment so far as to effect a redemption of the property, and all such payments or tender shall be made in the kind of money or currency in which the last redemption was made, and in which the lien of such redemption was payable. A person desiring to redeem may demand of the purchaser, or last redemptioner, or his attorney in fact, if he be absent from the county in which the property is situate, a statement in writing of all his claims and liens against the property to be paid on redemption, specifying each item; and if he fail to furnish said statement within three days, then it shall only be necessary to a redemption to pay or tender the amount of the bid or the last redemption, as the case may be, with the percentage allowed added thereto. J. C.

Same. 1297. SEC. 236. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the Sheriff: First, a copy of the docket of the judgment under which he claims the right to redeem, certified by the Clerk of the Court, or of the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof certified by the Recorder; second, a copy of an assignment necessary to establish his claim, verified by the affidavit of himself or of subscribing witnesses thereto; and, third, an affidavit by himself, or his agent, showing the amount then actually due on the lien. J. C.

Waste may be restrained. 1298. SEC. 237. Until the expiration of the time allowed for redemption, the Court may restrain the commission of waste on the property, or may appoint a receiver to take charge of the property, or the proceeds thereof, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property.

Rents and profits.

1299. SEC. 238. The purchaser from the time of a sale until a redemption, and a redemptioner from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof; *provided*, that in case the property shall be redeemed as provided in this chapter, the amount of such rents and profits which may have been received by such purchaser or redemptioner, or which said purchaser or redemptioner may have been entitled to claim or receive, unless such claim shall be released to the person claiming such right of redemption, shall be deducted from the amount which said purchaser or redemptioner would be entitled to receive on such redemption. ([a]) J. C.

(a) Secs. 238, 239, and Chapter 2, are made applicable to Justices' Courts by Sec. 1621, post.

When purchaser may recover price paid from judgment creditor.

1300. SEC. 239. If the purchaser of real property sold on execution, or his successor in interest, or a redemptioner be evicted therefrom in consequence of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at Sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof shall, on petition of such party in interest or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore, and when so revived, the said judgment shall have the same effect as an original judgment of the said Court of that date, and bearing interest as aforesaid, and any other or after acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale, under execution in satisfaction of such debt; *provided*, that no property of such debtor bona fide sold upon the filing of such petition, shall be subject to the lien of such judgment; and, *provided further*, that notice of the filing of such petition shall be made by filing a notice thereof in the office of the Recorder of the county where such property is situated, and that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest. J. C.

CHAPTER 2.—PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

When judgment debtor may be required to answer.

1301. SEC. 240. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the Sheriff of the county where he resides, or if he do not reside in this State, to the Sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the Judge of the Court requiring such judgment debtor to appear and answer upon oath concerning his property, before such Judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a Judge or referee out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

J. C.

Refusal to apply property to satisfaction of judgment.

1302. SEC. 241. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the Court, or of the Judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such Court, or Judge, may by an order require the judgment debtor to appear at a specified time and place before such Judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the Judge may, upon affidavit of the judgment creditor, his agent, or attorney, if it appear to him that there is danger of the debtor absconding, order the Sheriff to arrest the debtor and bring him before such Judge. Upon being brought before the Judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Judge, or referee, as shall be directed during the pendency of proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

J. C.

Debtor of judgment debtor may pay.

1303. SEC. 242. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the Sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the Sheriff's receipt shall be a sufficient discharge for the amount so paid.

J. C.

Debtor to appear and answer.

1304. SEC. 243. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the Judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and

J. C.

place before him, or a referee appointed by him, and answer concerning the same. ([a])

(a) The words "in an amount exceeding fifty dollars," in Sec. 243, are to be deemed omitted in Justices' Courts. See Sec. 1621.

1305. SEC. 244. Witnesses may be required to appear and testify before the Judge, or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue. Witnesses. J. C.

1306. SEC. 245. The Judge, or referee, may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; except that the earnings of the debtor, not exceeding fifty dollars, for his personal services at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor. Order of Court. Fifty dollars exempt. J. C.

1307. SEC. 246. If it appears that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the Court or Judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the Court or Judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the Judge granting the same, or the Court in which the action is brought, at any time, upon such terms as may be just. Adverse claim. J. C.

1308. SEC. 247. If any person, party, or witness disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the Court or Judge ordering the reference, for a contempt. Penalty for disobeying order of referee. J. C.

TITLE VIII.

Actions in particular cases.

CHAPTER 1.—ACTIONS FOR THE FORECLOSURE OF MORTGAGES. (1)

1309. SEC. 248. There shall be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage or lien upon real estate or personal property, which action shall be in accordance with the provisions of this chapter. In such action, judgment shall be rendered for the amount found due the plaintiff, and the Court shall have power, by its decree or judgment, to direct a sale of the incumbered property (or such part thereof as be necessary), and the application of the proceeds of the sale to the payment of the costs and expenses of the sale, the costs of the suit, and the amount due to the plaintiff. If it shall appear from the Sheriff's return that there is a deficiency of such proceeds and a balance still Power of Court to direct sale of property.

due to the plaintiff, the judgment shall then be docketed for such balance against the defendant or defendants personally liable for the debt, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may thereupon be issued by the Clerk of the Court, in like manner and form as upon other judgments, to collect such balance or deficiency from the property of the judgment debtor.

Surplus after sale, how disposed of.

1310. SEC. 249. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the Court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in Court.

Sales when debt not due.

1311. SEC. 250. If the debt for which the mortgage, lien, or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the Court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

(1) The mortgagor may contract to pay a counsel fee for the expense of enforcing the lien on the property mortgaged in case legal proceedings have to be taken. And such contract will be enforced to the extent of allowing a reasonable counsel fee beyond the costs allowed by law. The Courts will believe that to be reasonable for which the parties themselves contract, unless it be extravagantly large and apparently so made as to hold in terrorem over the mortgagor.—Cox v. Smith, 1 Nev., p. 161.

COMMON LAW JUDGMENT IN FORECLOSURE ACTION.—In a suit to foreclose a mortgage there may be a good common law judgment for the debt, which cannot be enforced until the equitable remedy against the mortgaged property is exhausted. Weil v. Howard, 4 Nev., p. 384.

EXECUTION FOR DEFICIENCY IN FORECLOSURE ACTION.—Under our system of practice, if a plaintiff in a foreclosure suit takes simply a decree in equity without a common law judgment (as he may do at his option), and the mortgaged property falls short of paying the entire debt, he may take out an execution for the balance.—Id.

LIEN OF FORECLOSURE JUDGMENT.—Sec. 246 of the Practice Act limits the lien of a foreclosure judgment or decree, whatever its form, to the mortgaged property until it is exhausted; and there can be no judgment lien upon other property until a deficiency is duly ascertained and docketed.—Id.

PREMATURE ENTRIES IN JUDGMENT DOCKET.—Stern and Weil obtained a judgment against Gaines for a certain amount of money secured by mortgage and for foreclosure of the mortgage, which personal judgment they immediately caused to be docketed. The usual order of sale of the mortgaged property being then issued, the Sheriff afterwards returned that he had sold the entire mortgaged property to satisfy a prior mortgage upon it, and that there was a deficiency of the whole amount of the Stern and Weil judgment: *Held*, that the docketing of the judgment at the time of its rendition was inoperative, and of no effect so far as the creation of any lien upon Gaines' other real estate was concerned; but that the docketing took effect and became valid so as to create a lien upon such other real estate at and from the time of the Sheriff's return.—Id.

THE SAME.—Where the proper entries for the docketing of a judgment are prematurely made, it is unnecessary for the Clerk to make them over again; when the proper time arrives at which they should be made, they become operative and effectual.—Id.

MISTAKE IN HEADING OF COLUMN IN JUDGMENT DOCKET. Under Sec. 205 of the Practice Act, the fifth column of the judgment docket should be headed "Time of Entry," the intention being to show when the judgment is entered; but where the heading was "When Docketed," and it appeared that the judgment was entered docketed on the same day: *Held*, that the mistake in the heading of the column did not affect the lien.—Id.

Under the English law, a mortgagee might simultaneously commence three proceedings to collect his debt or enforce his lien—an action of debt, an action of ejectment, and a bill to foreclose.—Hyman v. Kelly, 1 Nev., p. 179.

Our statute confines the mortgagee to the pursuit of one remedy only. The action of ejectment is entirely forbidden. Nor can the action of debt be resorted to unless the mortgage lien be entirely abandoned. The remedy against the property is confined to the remedy of foreclosure and sale.—Id.

Our statute does not deprive the mortgagee of any portion of the relief which is usually granted in foreclosure suits where the sale of the property is sought.—Id.

Receivers will be appointed in foreclosure suits where it is necessary to prevent fraud, injustice, or loss of security.—Id.

The section of the Practice Act which declares there shall be but one form of action to foreclose a mortgage does not deprive a mortgagee of his right to sell without action.—Bryant v. Carson River Lumbering Co., 3 Nev., p. 313.

Whether a mortgagee can sell without notice given. *Query.* Id.

In a mortgage of personal property the title passes to the mortgagee, subject to defeasance upon payment of the debt, and after breach of condition he has the absolute right, after due notice, to sell the property at public or private sale.—Id.

The purchaser of personalty sold by a mortgagee gets a perfect and indefeasible title. There is no right of redemption from such purchaser. That right only exists for a reasonable time after breach as against the mortgagee, who has not sold the property.—Id.

The fact that the purchaser knows that his vendor is only a mortgagee makes no difference as to the character of title acquired by the purchase.—Id.

PRIORITY OF MORTGAGE FOR PURCHASE MONEY.—Where a person in possession of land under a bond for the execution of a deed upon the payment of the purchase money erected a building upon it, and a mechanics' lien was filed, and after the filing of the lien such person procured a deed, and at the same time gave back a mortgage for the purchase money, the mortgagee having nothing to do with the building: *Held*, in a suit to foreclose the mortgage, in which the lien holder intervened, that the mortgage debt was first to be satisfied out of the property.—Virgin v. Brubaker, 4 Nev., p. 31.

MORTGAGE TO SECURE PURCHASE MONEY NOT A VENDOR'S LIEN.—A suit to foreclose a mortgage given to secure the purchase money of land, is not a suit for the enforcement of a vendor's lien.—Hopper v. Parkinson, 5 Nev., p. 233.

PER LEWIS, C. J.—The answer admits the assignment of the mortgage to Gentry as security for the money advanced. This admission must prevail over the findings of the Court to the contrary.—Nosler v. Haynes, 2 Nev., p. 56.

A stipulation as to the amount of judgment does not preclude the Court from entering the necessary decree to enforce the payment by sale of mortgaged property.—Id.

PER BEATTY, J.—The complaint avers the mortgage was not paid, and that it was regularly assigned. The answer denies neither of these allegations, and sets up no legal defense. On such pleadings the plaintiff is entitled to his decree, although it seems from the facts found, the defendant had a perfect defense against the mortgage claim, which, however, he utterly failed to set up.—Id.

Although defendant had a good defense to his action, he owed the same amount of money, which could have been recovered in another form of action. Having failed to make the proper defense, there is no hardship in compelling him to pay the money which he owes.—Id.

A Court of chancery may allow the mortgagee a percentage for the expense of collecting his mortgage, when the instrument provides for such allowance.—McLane v. Abrams, 2 Nev., p. 199.

If the mortgagee is compelled to file a cross bill, in a case where he is made defendant, to collect his mortgage debt, he will be entitled to the same percentage as if he had filed an original bill.—Id.

The allowance for a foreclosure suit should not always be the full amount mentioned in the mortgage, but a reasonable amount, not exceeding that provided for. In this case there is nothing to show the allowance of ten per cent was unreasonable.—Id.

PER BEATTY, J.—A Court of equity may take judicial notice of what is a reasonable fee for foreclosing a mortgage in such Court. Ten per cent on the amount of the mortgage was, in this case, unreasonable, and the Court should have reduced the allowance.—Id.

MORTGAGEE FOR PRE-EXISTENT DEBT WHEN REGARDED AS BONA FIDE PURCHASER FOR VALUE.—Where Howard was indebted to Fair, and executed to him a note for the debt, and a mortgage on certain real estate to secure the same: *Held*, that Fair, as to the land and mortgage, occupied the position of a bona fide purchaser for value, and that his right would prevail as against the equity of Armstrong, for whom Howard held half the land in trust, the declaration of which trust was, however, not put on record until after the mortgage.—Fair v. Howard, 6 Nev., p. 304.

POSSESSION OF LAND AS NOTICE OF TRUST IN IT—ESTOPPEL.—Where Armstrong, being the owner of land, deeded it to Howard by conveyance absolute on its face, but with an understanding that Howard was to hold one half the land in trust for him, and, after recording the conveyance, Armstrong remained in possession of the land: *Held*, that he was estopped from relying on his continuance in possession as notice of the trust.—Id.

CHAPTER 2.—ACTIONS FOR NUISANCE, WASTE, AND WILLFUL TRESPASS IN CERTAIN CASES, ON REAL PROPERTY.

1312. SEC. 251. Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered. Nuisance defined, action for, and judgment.

1313. SEC. 252. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages. Action for waste.

1314. SEC. 253. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any Court having jurisdiction. Injuring timber, etc. Liability for.

1315. SEC. 254. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken Same.

from uncultivated wood land for the repair of a public highway or bridge upon the land, or adjoining it.

Judgment for forcible and unlawful entry, etc.

1316. SEC. 255. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any uncultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER 3.—ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

Actions by persons in possession of real property.

1317. SEC. 256. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest. (1)

(1) Courts of equity independent of the statute might, in a proper case, remove a cloud from title.—Low v. Staples, 2 Nev., p. 209.

Courts of equity will always interfere to protect one from the operation of a deed which is void, or from some cause ought not to be enforced, unless the deed is void on its face, when there is no necessity for such interference.—Id.

Before a Court of equity will interfere to remove a cloud, they must be satisfied that the party seeking relief has the legal title. If the possession is held adversely, the Court may properly refuse to act until the complainant has established his legal title by an action at law.—Id.

Where the possession of the realty is in a corporation holding for the benefit of the original owners and assignees, and willing to recognize the right of whoever holds the proper assignment or transfer of the property, it is not necessary to bring an action at law preliminary to the establishment of a lost deed, and the removal of a cloud.—Id.

The statute (Practice Act, Secs. 154-5,) does not restrict any preëxisting right or remedy, but seems to give in some cases a new and more extensive remedy.—Id.

The action of ejectment is unknown to our system.—Alford v. Dewin, 1 Nev., p. 207.

Tenants in common may maintain a joint action for possession of real estate under our system.—Id.

Where parties having a joint right of action bring suit, and pending the litigation sever their interests, the suit will not abate.—Id.

Costs, when not to be recovered.

1318. SEC. 257. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

1319. SEC. 258. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property. Action where right has terminated during pendency.

1320. SEC. 259. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages. Improvements, value to be allowed.

1321. SEC. 260. The Court in which an action is pending for the recovery of real property may, on motion, upon notice by either party, for good cause shown, grant an order allowing such party the right to enter upon the property and make survey and measurement thereof, for the purposes of the action. (a) Court may allow survey to be made.

(a) Survey may be made in actions for the protection of mining claims.—Sec. 119, ante.

1322. SEC. 261. The order shall describe the property, a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property he shall be liable therefor. Order of survey.

1323. SEC. 262. A mortgage of real property shall not be deemed a conveyance, whatever its term, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. Mortgage not to be deemed conveyance

1324. SEC. 263. The Court may by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or after a sale on execution, before a conveyance. Court may enjoin injury.

1325. SEC. 264. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance. Damages for injury.

1326. SEC. 265. An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action. Action for recovery not prejudiced by alienation.

CHAPTER 4.—ACTIONS FOR THE PARTITION OF REAL PROPERTY.

1327. SEC. 266. When several persons hold and are in possession of real property, as joint tenants or as tenants in common, in which one or more of them have an estate of inheritance or for life, or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and Action for partition.

for a sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners. (1)

(1) It is immaterial when a party in possession files his bill claiming that he is a tenant in common with others, asking for a division of the land, etc., whether he shows that he has a legal title in common with the defendants, or only has an equitable title to the one half of the land described. In either case he is entitled to substantiarly the same relief.—Crosier v. McLaughlin, 1 Nev., p. 348.

When a party files a complaint for equitable relief, and the whole case shows it must be determined rather upon the application of legal principles to admitted facts, that on the determination of controverted facts, the case should not be submitted to a jury.—Id.

When a proceeding for partition of realty is had in a Court of equity, the Court will not only proceed to divide the land, but will, in a proper case, direct an accounting, and do equity in the case by making parties account for rents, etc.—Dall v. The Confidence Co., 3 Nev., p. 531.

When a bill is filed for a partition of realty, the Court should not decree a sale except in those cases where a partition would manifestly be injurious to the interests of the cotenants.—Id.

Under our statute, if any one or more of the cotenants files an affidavit showing that a sale of an entire mining claim would be injurious to him or them, the Court must proceed to divide the claim as prescribed by statute. A sworn answer setting up the same matter is equivalent to the affidavit required by the statute.—Id.

Whether one tenant in common of a mining claim will be allowed compensation for labor or money expended on the common property in developing it—*quere?* If such compensation is to be allowed, it must be for work done on the common property.—Id.

It could not be allowed for developments made on an adjoining claim, which incidentally enhanced the value of the common property.—Id.

Interests of parties to be set forth in complaint.

1328. SEC. 267. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Lien.

1329. SEC. 268. No persons who have or claim any liens upon the property, by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record.

1330. SEC. 269. Immediately after filing the complaint, the plaintiff shall file with the Recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons. **Notice of action.**

1331. SEC. 270. The summons shall be directed to all the joint tenants, and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and generally to all persons unknown who have or claim any interest in the property. **Summons to parties in interest.**

1332. SEC. 271. If a party having a share or interest is unknown, or any one of the known parties reside out of the State, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made the summons as published shall be accompanied by a brief description of the property which is the subject of the action. **Summons by publication.**

1333. SEC. 272. The defendants who have been personally served with the summons, and a certified copy of the complaint, shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property, and if such defendants claim a lien upon the property by mortgage, judgment, or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security; or they shall be deemed to have waived their rights to such lien. **Answer to set forth.**

1334. SEC. 273. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the Court, before the judgment of sale shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves. **Rights of parties may be determined**

1335. SEC. 274. The plaintiff shall produce to the Court, on the hearing of the case, the certificate of the Recorder of the county where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at the time of the commencement of the action. **Certificate as to liens.**

1336. SEC. 275. If it shall appear to the Court, by the certificate of the County Recorder or County Clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record upon such real property, or any part thereof, which existed and were of record at the time of the commencement of said action, and the persons holding **Persons holding liens to be made parties.**

such liens are not made parties to the action, the Court shall either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Notice. 1337. SEC. 276. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place, to make proof, by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely, thereon. In case such person be absent, or his residence be unknown, service may be made by publication of notice to his agents, under the direction of the Court, in such manner as may be proper. The report of the referee thereon shall be made to the Court, and shall be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require.

Sale of property, when may be ordered. 1338. SEC. 277. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the Court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the Court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition according to the respective rights of the parties, as ascertained by the Court, and appoint three referees therefor; and shall designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

Partition, how made. 1339. SEC. 278. In making the partition, the referee shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the Court, designating the several portions by proper landmarks; and may employ a surveyor, with the necessary assistants, to aid them therein.

Report of referees. 1340. SEC. 279. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

Judgment, effect of. 1341. SEC. 280. The Court may confirm or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive: First—On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years, or for life. Second—On all persons interested in the property who may be unknown, to whom notice shall have been given of the action for partition by publication; and, Third—On all other persons claiming from such parties or persons, or either of them.

Same.

1342. SEC. 281. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition.

Expenses of referees.

1343. SEC. 282. The expenses of the referees, including those of a surveyor and his assistant, when employed, shall be ascertained and allowed by the Court, and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action.

Lien on individual interest.

1344. SEC. 283. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Estate for life or years, how set off.

1345. SEC. 284. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Proceeds of incumbered property, how applied.

1346. SEC. 285. The proceeds of the sale of the incumbered property shall be applied, under the direction of the Court, as follows: First—To pay its just proportion of the general costs of the action. Second—To pay the costs of the reference. Third—To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment. Fourth—The residue among the owners of the property sold, according to their respective shares therein.

When other securities for payment of lien.

1347. SEC. 286. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the Court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Proceeds, how to be distributed

1348. SEC. 287. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the Court so directs. But in case no direction be given, all such proceeds and securities shall be paid into Court, or deposited therein, or as directed by the Court.

Determination of conflicting claims.

1349. SEC. 288. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into Court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the Court. Further testimony may be taken in Court, or by a referee at the discretion of the Court, and the Court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

Sales, how made. 1350. SEC. 289. All sales of real property, made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Same. 1351. SEC. 290. The Court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the State.

Same. 1352. SEC. 291. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the Court to be sold on credit, for the shares of any known owner of full age, in the name of such owner, and for the shares of an infant, in the name of the guardian of such infant, and for other shares, in the name of the Clerk of the county and his successors in office.

How tenants for life, etc., may receive satisfaction for estate sold 1353. SEC. 292. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the Clerk of the Court. Upon the filing of such consent, the Clerk shall enter the same in the minutes of the Court.

Same. 1354. SEC. 293. If such consent be not given, filed, and entered, as provided in the last section, at or before a judgment of sale is rendered, the Court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in Court for him, as the case may require.

Same. 1355. SEC. 294. If the person entitled to such estate for life or years be unknown, the Court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Contingent future right or estate. how settled 1356. SEC. 295. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the Court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

1357. SEC. 296. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately. Terms and mode of sale.

1358. SEC. 297. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void. Certain parties not to be interested in sale.

1359. SEC. 298. After completing a sale of the property, or any part thereof ordered to be sold, the referee shall report the same to the Court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any taken. The report shall be filed in the office of the Clerk of the county where the property is situated. Report of sale.

1360. SEC. 299. If the sale be confirmed by the Court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale. Order to execute conveyance

1361. SEC. 300. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him. Where party entitled to share purchases.

1362. SEC. 301. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown if the summons have been served by publication, and against all persons claiming from them or either of them. Conveyance, where recorded and effect.

1363. SEC. 302. When there are proceeds of a sale belonging to an unknown owner, or to a person without the State, who has no legal representative within it, the same shall be invested in securities or interest for the benefit of the persons entitled thereto. Proceeds belonging to unknown owners.

1364. SEC. 303. When the security of the proceeds of the sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the Clerk of the county where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the Court. Same.

1365. SEC. 304. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the Court, such securities shall be taken in the names of, and payable to, the parties respectively entitled thereto, and shall be delivered to such parties upon their Security by referees on sale.

receipt therefor. Such agreement and receipt shall be returned and filed with the Clerk.

Same. 1366. SEC. 305. The Clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the Court may direct, and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the Clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Compensation, when. 1367. SEC. 306. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interest of some of them, and a partition be ordered by judgment, the Court may adjudge compensation to be made by one party to another, on account of the inequality of partition. But such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

Proceeds of sale, infant's share paid to guardian. 1368. SEC. 307. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the Court.

Insane persons. 1369. SEC. 308. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referee, on executing with sufficient sureties an undertaking approved by a Judge of the Court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representatives.

Partition may be consented to by guardian. 1370. SEC. 309. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the Court.

Costs of partition. 1371. SEC. 310. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the Court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Single referee may be appointed.

1372. SEC. 311. The Court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

Mining claim, partition of

1373. SEC. 312. When the action is for partition of a mining claim among the tenants in common, joint tenants, coparceners or partners thereof, the Court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in manner as hereinbefore provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner hereinafter specified.

Order of Court.

1374. SEC. 313. The Court shall in its order, or by a subsequent order made upon motion, fix the time for division of the claim by the referees, which shall not be less than twenty nor more than forty days from the day of making the order, except by consent of all the parties in interest who have appeared in the action.

Referees to go on claim.

1375. SEC. 314. On the day designated in the order, the referees shall go upon the claim to be divided, and proceed to make division of the same as hereinafter provided, and shall continue from day to day until the whole business is completed.

Parties may unite.

1376. SEC. 315. Two or more of the tenants in common, joint tenants, copartners or parceners, may unite together for the purposes of such division, of which they shall give the referees written notice before they commence the business of division; and all who do not unite as aforesaid, or give notice of separate action, shall, for the purposes of division, be deemed and held to have united. The referees in their action shall recognize those named in the order of the Court, or their agents and attorneys in fact, duly appointed by instrument in writing under seal, and acknowledged as in cases of conveyances of real estate, the guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person or other person adjudged incapable of conducting his own affairs, and as to the interest of each, shall be controlled entirely by the order of the Court.

Parties selecting place of location.

1377. SEC. 316. At the time and place of division, one of the referees to be selected by them shall, in the manner of public auction, offer to the party or parties who will take the least part or portion of said mining claim in proportion to the interest he or they may have therein, the privilege of first selecting the place at which his portion shall be located, and upon closing the bids the referees shall proceed to measure and mark off, by distinct metes and bounds, to the lowest bidder, his or their portion of said mining claim, at the place designated by them or him, according to the terms of his or their bid.

Same.

1378. SEC. 317. When the referees have marked off and set apart the interest of the lowest bidder, as provided in the last section, they shall offer to the remaining parties the privilege of selection as in said section mentioned and described, and shall, upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder, and shall thereafter continue in the same manner to receive bids and mark off the interest of the bidder or bidders until there shall remain but one party in interest, or parties united, forming one interest, as provided in section three hundred and fifteen.

Parties remaining. 1379. SEC. 318. The party or parties remaining as provided in the last section, shall become the owner or owners, as the case may be, of the entire claim not marked off and set apart to other parties as hereinbefore provided, in proportion to their respective interests in the claim.

Evidence to be returned. 1380. SEC. 319. The referees shall return with their report in this Act required to be made by them, the evidences of authority presented to them by persons other than the parties mentioned in the order of the Court by which they claim the right to bid, or otherwise act, during the proceedings hereinbefore mentioned.

CHAPTER 5.—ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE. [a]

Actions for usurpation of office. 1381. SEC. 320. An action may be brought by the Attorney General in the name of the people of this State upon his own information, or on the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this State. And it shall be the duty of the Attorney General to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed so to do by the Governor.

(a) Of proceedings upon quo warranto, see Sec. 389, ante, et seq.

Complaint, what to state. 1382. SEC. 321. Whenever such action is brought, the Attorney General, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a Judge of the Supreme Court, or a District Judge, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights and liabilites as in other civil actions where the defendant is subject to arrest.

Defendant may be arrested.

Judgment, how rendered. 1383. SEC. 322. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled; or only upon the right of the defendant, as justice shall require.

When persons may take office. 1384. SEC. 323. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

1385. SEC. 324. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

Damages recoverable.

1386. SEC. 325. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Rights of several may be tried in one action.

1387. SEC. 326. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The Court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, shall be paid into the Treasury of the State.

Judgment, where defendant has intruded into office.

TITLE IX.

Of appeals in civil actions.

CHAPTER 1.—APPEALS IN GENERAL.

1388. SEC. 327. A judgment or order in a civil action, except when expressly made final by this Act, may be reviewed as prescribed by this title, and not otherwise. (1)

Judgment, how reviewed.

(1) A Court of appellate jurisdiction cannot reverse a judgment produced by the voluntary act of a party.—Paul v. Armstrong, 1 Nev., p. 82.

An appeal will not lie from a judgment by default. Per BROSNAN, J.—Id.

When a Judge orders a judgment in a cause, and that order is entered on the journal or minutes of the Court, and no further facts are to be ascertained to determine the extent, amount, and character of that judgment, but there simply remains the clerical duty of entering in the judgment book that which the Court has determined and ordered to be entered, this is a final judgment from which an appeal lies.—California State Telegraph Co. v. Patterson, 1 Nev., p. 150.

The right of appeal under our Practice Act does not depend upon the entry or perfection of the judgment of the lower Court, but upon the rendition of it.—Id.

When an erroneous judgment is entered, and there is a motion made in the Court below to have that judgment set aside, the appeal lies direct from the judgment, and not from the order refusing to set it aside.—Maples v. Geller, 1 Nev., p. 233.

In appeals from orders granting or refusing a new trial, a statement on appeal is not necessary.—Gregory v. Frothingham, 1 Nev., p. 253.

This Court, without such statement, will consider "the statement on motion for new trial, the pleadings, depositions, documentary evidence on file, and minutes of the Court."—Id.

The Practice Act of this State allows an appeal from an order setting aside a judgment.—Ballard v. Purcell et al., 1 Nev., p. 342.

A notice of appeal given orally to respondents, even if given in open Court and entered on the minutes of the Court, is not sufficient to make an appeal and dispense with the filing of a written notice.—Lambert v. Moore, 1 Nev., p. 344.

The filing and serving of a written notice of appeal must be followed by the filing of a proper undertaking, or the deposit in lieu thereof, within five days, or the notice becomes inoperative and a nullity.—Id.

An appeal from an interlocutory order granting a temporary injunction will not be sustained when such interlocutory order was suspended by a final decree before appeal taken.—Easterbrook v. Upton, 1 Nev., p. 398.

Where the notice of appeal is filed one day before the expiration of the time limited for taking an appeal, but the undertaking is not filed until three days after the expiration of that time, but within five days after the filing of the notice of appeal: *Held*, that the appeal was taken within the year allowed by statute.—Peran v. Monroe et al., 1 Nev., p. 484.

An appeal is taken by the filing and service of the notice, but it is effectual for no purpose until the undertaking is filed. And the failure to file such undertaking within the time prescribed by the Practice Act renders the notice nugatory; but if filed within that time it relates back to the time of the filing and service of the notice of appeal.—Id.

Where an appeal is taken from an order made on affidavits no statement is required, and those sections of the Practice Act making it the duty of the appellant to prepare a statement containing the grounds upon which he intends to rely on appeal, have no application to an appeal from such an order.—Gray v. Harrison et al., 1 Nev., p. 502.

Upon an appeal from a final judgment, this Court will review an order of a District Court dismissing an attachment, if the appeal is also taken from such order.—Williams et al. v. Glasgow, 1 Nev., p. 533.

An order setting aside a judgment by default is an appealable order, and if not appealed from, that order will not be reviewed after judgment on the merits.—Maynard v. Johnson, 2 Nev., p. 16.

A revenue stamp may be affixed to the notice of appeal even after motion to dismiss. When affixed, it renders notice operative from the time of filing.—Killip v. The Empire Mill Co., 2 Nev., p. 34.

The appeal here was properly taken from the order granting a new trial, rather than from the order allowing notice to be filed *nunc pro tunc*.—Id.

It is not necessary to appeal from a void order which can have no operation or effect.—Id.

A defective finding of facts is not a ground for reversing a judgment, when that defect is not noticed or complained of in the Court below.—McClusky v. Gerhauser, 2 Nev., p. 47.

This Court cannot reverse a judgment unless it affirmatively appear that error has been committed.—Nosler v. Haynes, 2 Nev., p. 53.

This Court will reverse not only erroneous judgments, but void judgments.—Hastings v. Burning Moscow Co., 2 Nev., p. 93.

The cost bill is no part of the judgment roll, and where there is no statement or bill of exceptions we cannot pass on its correctness. On a mere appeal from a judgment we cannot review any error which might occur in refusing to sustain a motion made, after the appeal was perfected, to strike out the cost bill.—Howard v. Richards and Richards, 2 Nev., p. 128.

The mistake in the calculation of the amount for which judgment should have been rendered, should have been corrected by motion in the lower Court.—Id.

Appellant having failed to make the application in that Court, we will make it here, but impose the costs on the appellant.—Id.

Where costs are improperly inserted in a judgment, it is the proper practice to move in the Court below to strike them out. But if that motion is denied, the appeal is from the judgment which is erroneous, and not from the order of the Court below refusing to correct the error.—Id.

Appeals from orders after judgments are allowed, not to correct erroneous judgments, but to correct some erroneous proceeding subsequent to and founded on a good judgment.—Id.

Sec. 284 of Practice Act, directs that certain papers shall be brought up on appeal; it does not in express terms prohibit other papers from being brought up.—Id.

The Constitution gives this Court the trial of cases on appeal, and the Legislature could not, if it would, deprive the Court of the power of examining such portions of the record as are necessary to determine all appeals.—Id.

The Legislature never intended to deprive this Court of the power to examine bills of exception and other parts of the record which are not mentioned in the two hundred and eighty-fourth section of the Practice Act.—Id.

We must look into the record to see if there is any foundation for a judgment appealed from. As the filing of a cost bill is the only thing that gives jurisdiction to enter up a judgment for costs, we must look to the record to see if any such bill has been filed, and if an examination of the cost bill filed shows error in the judgment for costs, that error must be corrected.—Id.

To enable this Court to reverse an order of the District

Court, the error complained of must affirmatively appear. All presumptions are in favor of the regularity of the proceedings in the Court below.—Champion v. Sessions et al., 2 Nev., p. 271.

It is not right to compel the unsuccessful party in this Court to pay the costs of appeal as a condition precedent to making his defense in the Court below.—Gallagher v. Dunlap, 2 Nev., p. 326.

Oral evidence is not admissible to show error in the proceedings of the Court below.—Ex Parte Smith, 2 Nev., p. 338.

CONFLICT OF EVIDENCE.—Neither the findings of fact by a Judge, nor the verdict of a jury, will be disturbed on the ground of insufficiency of testimony, in case of a conflict of testimony, unless the preponderance of evidence against it be great and decided.—Reed v. Reed, 4 Nev., p. 395.

APPELLANT MUST SHOW ERROR AFFIRMATIVELY.—An appellant, to entitle himself to a reversal of the order or judgment complained of, must make such an affirmative showing as will negative at least the probability of the correctness of such order or judgment.—Lady Bryan Gold and Silver Mining Company v. Lady Bryan Mining Company, 4 Nev., p. 414.

NO APPEAL FROM ORDER SUSTAINING A DEMURRER.—An appeal does not lie from the action of a District Court in simply sustaining a demurrer; there must be a final judgment in such case before an appeal can be taken.—Keyser v. Taylor, 4 Nev., p. 435.

DISMISSAL OF APPEAL.—Where the record on appeal discloses simply the sustaining of a demurrer, without showing a judgment, the appeal will be dismissed.—Id.

FAILURE OF TRANSCRIPT TO SHOW DISPOSITION OF MOTION FOR NEW TRIAL.—Where a transcript on appeal does not show that the motion for a new trial was ever submitted to, or passed upon by, the Court below, the judgment roll only will be looked into; and if no error appears in it, the judgment will be affirmed.—Neil v. Daniel, 4 Nev., p. 436.

CORRECTION OF ERRORS APPEARING IN JUDGMENT ROLL.—Where judgment on an open account included interest thereon (which the statute, in the absence of a special agreement, does not allow), and the error appeared in the judgment roll: *Held*, that it could be corrected in the Supreme Court by a modification of the judgment, although not called to the attention of, nor excepted to, in the lower Court.—Flannery v. Anderson, 4 Nev., p. 437.

NON-APPELLATE ORDER.—An order refusing to transfer a cause from a State District Court to a United States Court is not one of the orders contemplated by Sec. 285 of the Practice Act, and no direct appeal lies therefrom.—Combination S. M. Co. v. Curler, 4 Nev., p. 445.

SETTING ASIDE VERDICT FOR WANT OF EVIDENCE.—The verdict of a jury should not be vacated by an appellate Court on the ground of insufficiency of evidence, if there is any evidence to support it; but if there be no substantial evidence upon the side of the verdict, it is the undoubted duty of the appellate Court to set it aside.—Ophir Silver Mining Co. v. Carpenter, 4 Nev., p. 534.

ASSIGNMENT OF ERRORS IN STATEMENT ON APPEAL.—A statement on appeal must contain a specific statement of the particular errors or grounds relied on.—Corbett v. Job, 5 Nev., p. 201.

MATTER PROPER IN STATEMENT ON APPEAL.—A statement on appeal may contain all matter necessary for explanation of its grounds of error (which must be specifically stated), such as the verdict of a jury, findings of fact and conclusions of law when not made part of the judgment, minutes of the Court, etc.—Id.

JUDGMENTS NOT DISTURBED ON MEAGER GROUNDS.—In an action against Buckland, as surviving partner of the firm of Buckland & Bethel, it appeared in evidence that, in addition to the business of the firm, each of the partners was also engaged in separate business on his own account; that Bethel, being about to depart for San Francisco with the intention of laying in a stock of goods for the firm, Roney delivered to him a package of United States treasury notes and securities; that on his way to San Francisco Bethel lost his life; that after Bethel's death, Roney endeavored to collect his claim from his estate; and it did not appear what had become of the notes and securities after their delivery to Bethel: *Held*, that the evidence to show a delivery to or for the firm was too meager to justify a disturbance of the findings of the Court below in favor of the defendant.—Roney v. Buckland, 5 Nev., p. 219.

OBJECTION THAT FINDINGS ARE CONTRARY TO EVIDENCE. Where the ground of an appeal is that the findings of fact are contrary to the evidence, the burden of showing error is upon the appellant, and a meager showing is not sufficient.—Id.

NO REVERSAL FOR ERROR WHICH DOES NOT PREJUDICE. A judgment will not be reversed on account of error in admitting immaterial or incompetent testimony, when it appears that the appellant could not have been prejudiced thereby.—Cahill v. Hirschman, 6 Nev., p. 57.

WHAT CONSIDERED ON APPEAL FROM JUDGMENT.—On appeal from a judgment, any error appearing in the judgment roll may be corrected in the appellate Court without a statement on appeal.—Klein v. Allenbach, 6 Nev., p. 159.

APPEAL—TRANSCRIPT CONTAINING NOTHING TO BE REVIEWED.—Where, on appeal from a judgment and order overruling a motion for a new trial, the transcript contained neither judgment, order, settled or agreed statement, nor bill of exceptions: *Held*, that there was nothing before the appellate Court which could be reviewed.—State v. Eberhardt Company, 6 Nev., p. 186.

PRACTICE—DISMISSAL OF APPEAL.—Where there is a failure to bring up in the record anything to be reviewed, the appeal will be dismissed.—Id.

APPEAL IN CASE OF CONFLICT OF EVIDENCE.—The rule that a judgment will not be disturbed as being against evidence, where there is a conflict of evidence, has been often enough announced to be considered settled.—Clark v. Nevada L. & M. Co., 6 Nev., p. 203.

ANY SUBSTANTIAL EVIDENCE WILL SUPPORT A JUDGMENT.—A judgment will be sustained as against an objection that it is contrary to evidence, if there be any substantial testimony for it to rest upon.—Lewis v. Wilcox, 6 Nev., p. 215.

JUDGMENT CORRECT THOUGH REASON WRONG.—If a judgment be right, though decided upon a wrong ground, it will not be disturbed by the Supreme Court.—Conley v. Chedic, 6 Nev., p. 222.

PRACTICE ACT, SEC. 332—STATEMENT ON APPEAL FROM ORDER.—The word "order," in section three hundred and thirty-two of the Practice Act, providing for a statement on appeal from a judgment or order, does not refer to the ordinary order upon a motion for new trial.—Johnson v. Wells, Fargo & Co., 6 Nev., p. 224.

STATEMENT ON APPEAL FROM NEW TRIAL ORDER.—On appeal from an order granting or refusing a new trial, any matter properly pertaining to such order, except it may have arisen subsequent to the notice for the motion, may be considered without any other statement than that used on the motion for new trial.—Id.

ORDER REQUIRING BOND OR APPOINTING RECEIVER NOT APPEALABLE.—The statute (Practice Act, Sec. 330,) does not allow an appeal from an order requiring a party to give a bond, nor from an order appointing a receiver.—Meadow Valley M. Co. v. Dodds, 6 Nev., p. 261.

ORDER APPEALABLE ONLY IN PART.—Where, upon a rule to show cause why an injunction should not issue, an order was made that defendants, in consideration of their retaining control of the premises in controversy, should give a bond to pay all damages that plaintiff might sustain; that in default thereof, a receiver should be appointed, and that defendants might make improvements, but not remove any improvements already made, nor commit waste: *Held*, that if the order was appealable at all, it was only in so far as it placed an injunction upon defendants.—Id.

RELIEF ON APPEAL FROM ORDER APPEALABLE ONLY IN PART.—Where an order granting an injunction embraced a further order, entirely independent of the injunction, to the effect that one party should execute a bond for the protection or security of the other: *Held*, on appeal therefrom, that the entertainment by the appellate Court of the portion of the order which was appealable would not warrant a review of the other portion which was not appealable.—Id.

ORDER EMBRACING DISTINCT AND INDEPENDENT ORDERS.—Where an order embraces matters really independent and distinct, the mere fact that they are so embraced or made at the same time and written on the same paper, does not make them one and the same order.—Id.

ASSIGNMENT OR SPECIFICATIONS OF ERRORS ON APPEAL.—Where, on appeal from an order, appellant brought up a statement of the evidence heard and proceedings had, claiming that it exhibited various errors of the Court, and showed that plaintiff failed to make out a case, but without pointing out the particular errors or failure: *Held*, that as there was no assignment or specification of such alleged errors, they could not be reviewed by the appellate Court.—Id.

NO REVERSAL FOR ERROR WHICH DOES NOT PREJUDICE.—No error is noticeable or deemed material which did not or could not prejudice the rights of the party complaining.—Caples v. C. P. R. R. Co., 6 Nev., p. 265.

APPEAL—POINTS NOT COVERED BY TRANSCRIPT NOT CONSIDERED.—Alleged error in refusing to grant a continuance cannot be considered by the Supreme Court, if the affidavits are not properly in the transcript, and there is no bill of exceptions, nor statement.—State v. Wallin, 6 Nev., p. 280.

SHOWING OF IMMATERIALITY OF ERROR IN CRIMINAL CASES MUST BE CONCLUSIVE.—On an appeal, where error is shown to have been committed, the burden of establishing its immateriality is on the respondent; and, in criminal cases, the showing of immateriality must be conclusive.—State v. Van Winkle, 6 Nev., p. 340.

APPEAL—INSUFFICIENCY OF EVIDENCE.—Where a finding for plaintiff, as to the quantity of a water appropriation, was founded upon the basis that the flume was of a certain size, and also of a certain grade, and it appeared on appeal that, though the size of the flume was proved, there was no sufficient proof of its grade: *Held*, on proper objection, that the judgment should be set aside.—Ophir S. M. Co. v. Carpenter, 6 Nev., p. 393.

NEW ISSUES NOT TO BE RAISED IN THE SUPREME COURT.—Where, on the trial of a water case, it was conceded that the findings as to the quantity of water appropriated were to depend upon the capacity of the flume at a certain point: *Held*, that the investigation in the Supreme Court, as to the question of quantity, should be confined to the same point of the flume.—Id.

1389. SEC. 328. An order made out of Court, without notice to the adverse party, may be vacated or modified without notice, by the Judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made. **Order may be vacated.**

1390. SEC. 329. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent. **Parties designated.**

In what cases an appeal may be taken.

1391. SEC. 330. An appeal may be taken: First—From a final judgment in an action or special proceeding commenced in the Court in which the judgment is rendered, within one year after the rendition of judgment. Second—From a judgment rendered on an appeal from an inferior Court, within ninety days after the rendition of the judgment. Third—From an order granting or refusing a new trial, from an order granting or dissolving an injunction, and from an order refusing to grant or dissolve an injunction, and from any special order made after the final judgment, within sixty days after the order is made and entered in the minutes of the Court. Fourth—From an interlocutory judgment or order in cases of partition which determines the right of the several parties, and directs partition, sale, or division to be made, within sixty days after the rendition of the same.

How made.

1392. SEC. 331. The appeal shall be made by filing with the Clerk of the Court with whom the judgment or order appealed from is entered, a notice, stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

Statement on appeal.

1393. SEC. 332. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and no more, and shall file the same with the Clerk, and serve a copy thereof upon the adverse party. The respondent may, within five days thereafter, prepare and file amendments to the statement, and shall serve a copy thereof on the appellant; the statement and amendments shall be presented to the Judge or referee who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such Judge or referee. If no amendments are filed, the statement may be presented to the Judge or referee for settlement, without any notice to the respondent. (1)

(1) This Court has never held it indispensable that a statement should be made in the Court below of the grounds relied on upon appeal, in order to entitle the appellant to a hearing. Whilst the Court has censured the loose practice of omitting such statement of these grounds of error, it has not denied relief to litigants for the carelessness of their counsel in this respect.—Gillig, Mott & Co. v. Lake Bigler Road Co., 2 Nev., p. 214.

The exceptions to the rulings of the Court below will be treated as a substitute for a statement of the grounds of error relied on.—Id.

ON PETITION FOR REHEARING.—If there is an entire failure to make any note of an exception, taken either by the Judge or his Clerk, and the term of Court expires at which the case was tried and judgment rendered, the Judge would afterwards have no authority to settle, or make a bill of exceptions showing the fact. He might settle the statement even after the term, if made within the time prescribed by law. The general rule is that after judgment and the adjournment of the term the Court loses jurisdiction over the case for most purposes.—Per BEATTY, C. J.: Lobdell v. Hall, 3 Nev., p. 507.

Under our practice, if an exception is actually taken at the trial, but not drawn up in form for the Judge's signature, and no note of it is made, either by the Judge or the Clerk, still the party dissatisfied with the judgment has a right to make his statement on motion for new trial, or on appeal, and in either of such statements he may show any exception that he really took during the trial, although there be no note of the same. For the purpose of settling such statements, the Court still retains jurisdiction of the case until the time prescribed by law has expired. After the statement is once made and settled, the Court below loses jurisdiction of the case, and no addition can be made to such statement. Per BEATTY, C. J.—Id.

When there is a statement on appeal from the judgment, and subsequently a statement on appeal from an order overruling a motion for a new trial, each statement must be considered separately, and portions of one cannot be taken to aid the other.—Whitmore v. Shiverick, 3 Nev., p. 288.

It would be error to grant a new trial where there is no affidavit and no statement in support of the motion for that object. Id.

A statement on appeal must be made within twenty days after judgment, and if a sufficient statement be not made within that time it cannot be subsequently made.—Id.

This Court will not reverse a judgment because the verdict or finding of facts is not sustained by the evidence, unless the appellant has made his motion and statement on motion for a new trial in the Court below.—Id.

Where there is a statement on motion for new trial, and the moving party appeals from the order refusing a new trial, the case comes before this Court on the same statement on which the Court below acted, and there is no necessity for a statement on appeal.—Bryant v. Carson Lumbering Co., 3 Nev., p. 313.

When there is a statement on motion for a new trial, there need be none on appeal.—O'Neale v. Cleveland, 3 Nev., p. 486.

MERE NARRATIVE OF TRIAL NOT A STATEMENT.—A paper containing a mere recital of the progress of a trial and detail of matters occurring thereat, with exceptions to the rulings of the Court taken therein, but not presenting such exceptions in the form of a bill, nor in any manner except as simply noted in the course of the narrative, is in no sense a statement, and must be disregarded.—Corbett v. Job, 5 Nev., p. 201.

CERTIFICATE OF JUDGE TO STATEMENT.—If it be stated in a statement that it contains all the material evidence, the certificate of the Judge to the correctness of the statement is sufficient to establish that fact; but a certificate that a statement is correct does not show that it contains all the evidence when that fact is not stated in it.—Sherwood v. Sissa, 5 Nev., p. 319.

ERROR PRESENTED BY JUDGMENT ROLL.—In a suit on a money demand, where the recovery was for a sum less than three hundred dollars and costs: *Held*, that the error in the judgment for costs being apparent from the judgment roll itself, might be corrected on appeal from the judgment without a statement.—Klein v. Allenbach, 6 Nev., p. 159.

WAIVER OF WAIVER—TIME TO MAKE STATEMENT ON APPEAL.—A failure to make a statement on appeal within twenty days after the entry of judgment is equivalent to a waiver of such statement; but such waiver may be itself waived; and a stipulation that the statement on new trial shall be also the statement on appeal, though made more than twenty days after judgment, is such a waiver.—Johnson v. Wells, Fargo & Co., 6 Nev., p. 224.

Waiver of.

1394. SEC. 333. If the party shall omit to make a statement within the time limited, he shall be deemed to have waived his right thereto; and when a statement is made and the parties shall omit within the several times above limited, the one party to propose amendments, the other to notify an appearance before a Judge or referee, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the Judge or referee who tried or heard the case shall, notwithstanding such omission or implied agreement, have power to correct any misstatement of his rulings which such statement may contain.

Time enlarged.

1395. SEC. 334. The several periods of time above limited may be enlarged, upon good cause shown, by the Judge before whom the cause was tried.

How certified.

1396. SEC. 335. The statement, when settled by the Judge or referee, shall be signed by him, with his certificate that the same has been allowed and is correct. When the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon, it shall be filed with the Clerk. (1)

(1) JUDGE'S CERTIFICATE TO STATEMENT ON APPEAL.—The Practice Act (Secs. 197 and 335) does not contemplate that the Judge shall certify that a statement on appeal contains all the evidence, but simply that it has been allowed by him and is correct.—Caples v. C. P. R. R. Co., 6 Nev., p. 265.

ADDITIONS TO JUDGE'S CERTIFICATE TO STATEMENT.—A Judge's certificate to a statement on motion for new trial and appeal, that the record contains all the evidence, will not be allowed to be added after the appeal has been perfected and the transcript become a record of the appellate Court.—Id.

TRANSCRIPT NOT CONTAINING ALL THE EVIDENCE.—An objection that the evidence is insufficient to support the judgment is unavailable on appeal, if the transcript does not purport to contain all the evidence on the point, it requiring an affirmative showing to rebut the presumption that all facts necessary to support the judgment were sufficiently proved.—Id.

Copy to be annexed.

1397. SEC. 336. A copy of the statement shall be annexed to a copy of the judgment roll, if the appeal be from a judgment; if the appeal be from an order, to a copy of such order.

Certain sections not to apply to appeals from order.

1398. SEC. 337. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed, but such affidavit shall be annexed to the order, in the place of the statement mentioned in those sections.

Review on appeal from judgment.

1399. SEC. 338. Upon an appeal from a judgment, the Court may review any intermediate order involving the merits and necessarily affecting the judgment.

Same.

1400. SEC. 339. Upon an appeal from a judgment or order, the appellate Court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify, any or all of the proceedings subsequent to or dependent upon such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate Court may make complete restitution of all property and rights lost by the erroneous judgment or order, and when it appears to the appellate Court that the appeal was made for delay, it may add to the costs such damages as may be just. (1)

[NOTE.—Sec. 283 of the Practice Act of 1861 corresponds with Sec. 339, above.]

(1) This Court has no jurisdiction to try an appeal from an order sustaining a demurrer where no judgment has been rendered.—Nevada v. Earl et al., 1 Nev., p. 394.

The judgment of an inferior Court will not be set aside on appeal for errors committed on the trial which it appears could not have prejudiced the appellant.—Mitchell v. Bromberger, 2 Nev., p. 345.

When a cost bill appears regular on its face, and there is nothing in the record to show error in any of the items charged, the refusal of the Court below to retax the costs must be presumed to be correct.—Id.

WHO MAY APPEAL.—If a person is a party to a record he may appeal, and if he can show that the judgment is erroneous he will be entitled to a reversal, unless it appear affirmatively that the error cannot injuriously affect his interest.—Virgin v. Brubaker, 4 Nev., p. 31.

THE SAME.—If a judgment imposes costs upon a person, he is entitled to a hearing on an appeal from it.—Id.

APPEAL — CONFLICTING EVIDENCE.—Ordinarily, the Supreme Court will not interfere with the verdict of a jury on the ground of insufficiency of evidence, where the evidence is conflicting.—Carlyon v. Lannan, 4 Nev., p. 156.

APPEAL FROM ORDER OPENING DEFAULT.—The Supreme Court will not reverse an order setting aside a default, except in an extreme case.—Howe v. Coldron, 4 Nev., p. 171.

APPEAL FROM ORDER REFUSING TO CHANGE VENUE.—Under section —— of the Practice Act, an appeal is authorized from an order refusing to change the place of trial.—Table Mountain Min. Co. v. Waller's Defeat Min. Co., 4 Nev., p. 318.

DAMAGES FOR UNREASONABLE APPEALS.—In cases of appeals from orders refusing to change the place of trial, damages for delay will be imposed, unless reasonable ground for appeal is shown.—Id.

DAMAGES ON APPEAL FOR DELAY.—Where an appeal, devoid of merit, appears to have been made for delay, damages, in addition to costs, will be imposed.—Kercheval and Julian v. McKenny, 4 Nev., p. 294.

CONFLICT OF EVIDENCE.—A verdict will not be set aside by an appellate Court on the ground of insufficiency of evidence, where there is some evidence to support it, unless there be such a decided preponderance of evidence against it as to create a conviction that it was the result of mistake or misconduct on the part of the jury.—Quint and Hardy v. The Ophir Silver Min. Co., 4 Nev., p. 304.

ERROR TO JUSTIFY REVERSAL MUST BE MATERIAL.—A judgment will not be reversed on account of error in the proceedings, unless such error be material or calculated to mislead the jury or produce an erroneous result.—Id.

MERE OBJECTIONS OF COUNSEL IN TRANSCRIPT NOT PROOF OF FACTS.—On appeal from a judgment for delinquent taxes, it was objected that the delinquent list was not properly certified by the Auditor; but the list itself was not made a part of the record, and all that the transcript showed in relation to it was, that in the Court below counsel " objected to the list, because of its not being properly authenticated, in that no certificate is contained therein or attached thereto:" *Held*, that there was nothing to show a want or defect of certificate, and that the objection was of no avail in the appellate Court.—The State of Nevada v. The Manhattan Silver Min. Co., 4 Nev., p. 318.

Whether this Court, on reversing a judgment, may also order a sale under execution to be set aside.—Hastings v. Burning Moscow, 2 Nev., p. 100.

Section 283 of the Practice Act of 1861, and Section 8 of the Act of 1864-5, in relation to Courts of justice, commented on.—Id.

Even if the Supreme Court, on appeal from a judgment, might order an execution and sale made before appeal to be set aside, yet it is clear that the District Court, after case reversed, has concurrent jurisdiction to do the same thing.—Id.

It is the proper practice, after a judgment has been reversed in this Court, to move in the Court below, when these facts justify such proceedings, to set aside a sale made on execution under an erroneous judgment.—Id.

In an equity case, this Court may order the proper decree to be entered in the Court below without the formality of a new trial.—Feusier v. Sneath, 3 Nev., p. 120.

UPON REHEARING.—The unsupported testimony of one of the contracting parties to a sealed instrument can in no case be sufficient to establish fraud in proving the execution of the instrument.—Id.

The rule that an appellate Court will not disturb the judgment of a nisi prius Court founded on the verdict of a jury where there is conflicting testimony, has no application to chancery cases tried without a jury. More especially is this the case when all the important testimony is contained in depositions. This Court is as competent to determine the weight and effect to be given to written testimony as the Court below. Id.

An appellate Court certainly has the power to reverse an erroneous judgment, rather than to modify it. If an order is made reversing a judgment, the term expires, and the remittitur is sent to the Court below; it is then too late to ask this Court to change its order so as to modify the judgment of the Court below, rather than to make it an unqualified reversal.—Bullion Mining Co. v. Crœsus Co., 3 Nev., p. 336.

ON REHEARING.—The mere expression of an erroneous opinion during the progress of a trial by the Judge of a nisi prius Court, will not be cause for reversing a judgment. It must be shown that some result injurious to the appellant followed that opinion.—Fleeson v. Savage Mining Co., 3 Nev., p. 157.

Where an erroneous ruling of a Court on the trial of a cause might reasonably be followed by one or the other of two results—the one perfectly harmless, and the other injurious to the appellant—the record must show which result did follow, or this Court cannot reverse the judgment.—Id.

The admission of hearsay evidence about a point which was immaterial, and which could, by no possibility, have injured appellant, will not be ground for reversing a case.—Beatty v. Sylvester, 3 Nev., p. 228.

1401. SEC. 340. On an appeal from a final judgment, the appellant shall furnish the Court with a transcript of the notice of appeal, and the statement, if there be one, certified by the respective attorneys of the parties to the appeal, or by the Clerk of the Court. On an appeal from a judgment rendered on an appeal, or from an order, the appellant shall furnish the Court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used on the hearing in the Court below, such copies to be certified in like manner to be correct. If any written opinion be placed on file in rendering judgment or making the order in the Court below, a

Duty of appellant.

copy shall be furnished, certified in like manner. If the appellant fails to furnish the requisite papers, the appeal may be dismissed. (1)

(1) TRANSCRIPT MUST SHOW FACTS DIRECTLY.—To establish a fact so that the Supreme Court can act upon it, a transcript must show evidence introduced in relation to it, or an admission of it by opposite counsel, or a certificate of the Judge who tried the case, to that effect, or a positive statement of the circumstance as having in some way been shown on the trial.—State v. Manhattan Co., 4 Nev., p. 318.

FINDINGS NOT "WRITTEN OPINION."—The Practice Act, Sec. 340, when it speaks of any "written opinion placed on file in rendering judgment," does not refer to findings.—Corbett v. Job, 5 Nev., p. 201.

ERRORS NOT PREJUDICIAL.—A judgment will not be reversed on account of error in an instruction to the jury, when it appears that the instruction could not possibly have injured the party complaining or misled the jury to his prejudice.—Robinson v. Imperial Min. Co., 5 Nev., p. 46.

NO REVERSAL FOR ERROR WHERE JUDGMENT CLEARLY RIGHT.—A verdict which is undoubtedly right upon the evidence—that is, so clearly right that if it were the other way it would be considered contrary to the evidence—should not be set aside because of the admission of improper evidence, or the giving of incorrect instructions.—Id.

Undertaking.

1402. SEC. 341. To render an appeal effectual for any purpose, in any case, a written undertaking shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars; or that sum shall be deposited with the Clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the Clerk, within five days after the notice of appeal is filed.

Stay of execution of judgment.

1403. SEC. 342. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal. When the judgment or order appealed from is made payable in a specified kind of money or currency, the undertaking required by this section shall be drawn and made payable in the same kind of money or currency specified in such judgment or order.

1404. SEC. 343. If the judgment or order appealed from direct the assignment or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the Court may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the Court or the Judge thereof may direct, to the effect that the appellant will obey the order of the appellate Court upon the appeal. **Assignment or delivery of documents, etc.**

1405. SEC. 344. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the Clerk with whom the judgment or order is entered, to abide the judgment of the appellate Court. **Execution of conveyance, etc.**

1406. SEC. 345. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit nor suffer to be committed, any waste thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the Judge of the Court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment for a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency. In all other cases, not hereinbefore mentioned, the amount of the undertaking to stay the execution of the judgment or order shall be fixed by the Court or the Judge thereof. **Sale or delivery of property.**

1407. SEC. 346. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the Court below, upon the judgment or order appealed from, or upon matter embraced therein; but the Court below may proceed upon any other matter included in the action and not affected by the judgment or order appealed from. And the Court below may, in its discretion, dispense with or limit the security required by said sections, when an appellant is an executor, administrator, trustee, or other person acting in another's right. **Appeal perfected to stay proceedings below.**

1408. SEC. 347. The undertaking prescribed by sections three hundred and forty and three hundred and forty-one, three hundred and forty-two and three hundred and forty-three, may be in one instrument or several, at the option of the appellant. **Undertaking may be one or several.**

1409. SEC. 348. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they are each worth the amount specified therein, over and above their just debts and liabilities, exclusive of the property exempt from execution; except where the judgment exceeds three thousand dollars and the undertaking on appeal **Affidavit of sureties, etc.**

Same.

is executed by more than two sureties, they may state, on their affidavit, that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and, unless they or other sureties justify before the Judge of the Court below, or Clerk, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal shall be regarded as if no such undertaking had been given; and in all cases where an undertaking is required on appeal by the provisions of this chapter, a deposit in the Court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking, and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Appeal perfected to stay proceedings, when. **Sale of perishable property by order of Court.**

1410. SEC. 349. In cases not provided for in sections three hundred and forty-one, three hundred and forty-two, three hundred and forty-three, and three hundred and forty-four, the perfecting of an appeal by giving the undertaking, and the justification of the sureties thereon, if required, or making the deposit mentioned in section three hundred and forty, shall stay proceedings in the Court below upon the judgment or order appealed from, except that where it directs the sale of perishable property the Court below may order the property to be sold, and the proceeds thereof to be deposited to abide the judgment of the appellate Court.

Hearing, etc.

1411. SEC. 350. Appeals may be brought to a hearing by either party upon a notice of three days to the opposite party. Before the argument each party shall furnish to the other, and to each of the Justices, a copy of his points and authorities, or either party may file one copy thereof with the Clerk, who shall cause the requisite copies to be made.

Judgment on appeal.

1412. SEC. 351. When judgment is rendered upon the appeal, it shall be certified by the Clerk of the Supreme Court to the Clerk with whom the judgment roll is filed or the order appealed from is entered. In cases of appeal from the judgment, the Clerk with whom the roll is filed shall attach the certificate to the judgment roll and enter a minute of the judgment of the Supreme Court on the docket against the original entry. In cases of appeal from an order, the Clerk shall enter at length, in the records of the Court, the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that the order has been affirmed, reversed, or modified, as the case may be, by the Supreme Court on appeal.

Execution for costs.

1413. SEC. 352. Whenever costs are awarded to a party by an appellate Court, such party may have an execution for the same on filing a remittitur with the Clerk of the Court below, and it shall be the duty of such Clerk, whenever the remittitur is filed, to issue the execution upon application therefor, and whenever costs are awarded to a party, by an order of any Court, such party may have an execution therefor in like manner as upon a judgment.

FORM OF REMITTITUR.—No peculiar form or nice technical exactness is required in a remittitur.—French v. Strong, 4 Nev., p. 87.

EVIDENCE OF AUTHORITY TO ISSUE REMITTITUR.—The mere fact that a remittitur appears to have been issued before a decision refusing a petition for rehearing was filed, is not sufficient evidence that it was issued without authority.—Id.

APPEAL—PREJUDICIAL ERROR ONLY AVAILABLE ON APPEAL.—Though improper evidence may be admitted on the trial of a case, yet, if its admission could in nowise injure the opposite party, he has no cause of complaint therefor—no error, except such as may have prejudiced appellant's case, being available on appeal.—Todman v. Purdy, 5 Nev., p. 238.

NO APPEAL ON FINDINGS EXCEPT BY STATEMENT.—Findings are no portion of the judgment roll, nor is there any statutory provision for their introduction into the transcript on appeal under a Clerk's certificate. They must, therefore, be brought up, if at all, by means of a statement; and if not so brought up they cannot be considered.—Imperial S. M. Co. v. Barstow, 5 Nev., p. 252.

Richards v. Howard, 2 Nev., p. 128, and Corbett v. Job et al., ante, p. 201, on the point that findings will not be considered on appeal unless embodied in a statement, approved.—Id.

RECORD ON APPEAL FROM ORDER GRANTING OR REFUSING NEW TRIAL.—On appeal from an order granting or refusing a new trial, the appellate Court is confined in its investigations to the record used in the motion in the Court below.—Coldwell v. Greeley, 5 Nev., p. 258.

APPEAL FROM ORDER REFUSING AMENDMENT TO STATEMENT ON NEW TRIAL.—Where, after argument on motion for new trial, a motion was made to amend the statement, which was refused, and the transcript on appeal contained no further statement than that used on the motion for new trial: *Held*, that the merits of the application to amend could not be inquired into by the appellate Court.—Id.

APPEAL FROM PROCEEDINGS SUBSEQUENT TO ARGUMENT ON MOTION FOR NEW TRIAL.—Proceedings occurring after the argument on motion for new trial, can be brought to the attention of the appellate Court only by means of a statement on appeal setting them out.—Id.

POINTS INVOLVED ON APPEAL FROM NEW TRIAL ORDER. All points which could be urged in the Court below, on a motion for a new trial, either for or against it, including objections to the statement, may be raised on appeal from the order granting or refusing it, without any further statement.—McWilliams v. Hirschman, 5 Nev., p. 263.

APPEAL ON CONFLICT OF EVIDENCE.—A judgment will not be set aside by the Supreme Court on the ground of being contrary to the evidence, where there appears to be a conflict of evidence, unless there be such a decided preponderance against it as to create a conviction that it was the result of mistake or misconduct.—Covington v. Becker, 5 Nev., p. 281.

PRESUMPTIONS IN FAVOR OF INSTRUCTIONS GIVEN.—It will be presumed by the Supreme Court, on appeal, unless the contrary be shown, that all instructions given by the District Court to the jury were pertinent to the issues and the evidence. Sherwood v. Sissa, 5 Nev., p. 349.

PRESUMPTION AGAINST INSTRUCTIONS REFUSED.—If an instruction be refused which, under any state of facts, would be correct, and it be shown to be pertinent to the issues, such refusal is error; but if the instruction would be incorrect under some state of facts, and it be not shown that such was not the case, it will be presumed to be incorrect as applied to the case made out.—Id.

STATEMENT NOT CONTAINING ALL THE EVIDENCE.—A verdict will not be set aside as being unsupported by the evidence, where the statement does not affirmatively show that it embodies all the material evidence bearing upon the facts found in the verdict.—Id.

OBJECTIONS NOT TAKEN BELOW NOT AVAILABLE IN APPELLATE COURT.—On appeal from an award of compensation for land taken for railroad purposes, objections that the Commissioners did not meet at the time fixed, and did not file their report within the period allowed by the Court, cannot be taken for the first time in the appellate Court.—V. & T. R. R. Co. v. Elliot, 5 Nev., p. 358.

APPEAL ON GROUND OF VERDICT AGAINST EVIDENCE—CONFLICT OF TESTIMONY.—An appellate Court will not disturb the verdict of a jury upon the ground that it is not supported by the evidence, if there is a material conflict in the evidence and there is some substantial testimony to support it. State v. Yellow Jacket S. M. Co., 5 Nev., p. 415.

TITLE X.

Miscellaneous proceedings.

CHAPTER 1.—PROCEEDINGS AGAINST JOINT DEBTORS. (a)

How those not served may be bound by judgment.

J. C.

1414. SEC. 353. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceedings as provided in section thirty-two, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons. (1)

(a) The provisions of Chapter 1, Title 10, are made applicable to Justices' Courts by Sec. 1650, post.

(1) JUDGMENT AGAINST ONE PARTNER BARS ACTION AGAINST HIS COPARTNER.—A judgment against one partner, upon a partnership contract, merges the debt and constitutes

a bar to a subsequent action for the same breach against his copartners.—Tinkum v. O'Neale, 5 Nev., p. 93.

ACTION AGAINST PARTNER WHERE COPARTNER DISCHARGED IN BANKRUPTCY.—Where one of two partners is discharged in bankruptcy, the other may be proceeded against alone.—Id.

SUSPENSION OF LEGAL PROCEEDINGS BY BANKRUPTCY.—The suspension of legal proceedings against a person declared a bankrupt, as provided for by the United States bankrupt law, does not affect or modify his obligations, but only temporarily suspends the remedy for their enforcement.—Id.

1415. SEC. 354. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint. Summons to show cause. J. C.

1416. SEC. 355. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon. Same. J. C.

1417. SEC. 356. Upon such summons, the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the Statute of Limitations. Answer and defense. J. C.

1418. SEC. 357. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case. If he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations. Where defendant denies liability. J. C.

1419. SEC. 358. The issues formed may be tried as in other cases, but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon. Issues formed, how tried. J. C.

CHAPTER 2.—CONFESSION OF JUDGMENT WITHOUT ACTION. (a)

1420. SEC. 359. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Judgment by confession, how entered. J. C.

(a) Chapter 2 is made applicable to Justices' Courts, as to confession of judgment, by Sec. 1573, post.

Statement in writing to be made.

J. C.

1421. SEC. 360. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect: First—It shall authorize the entry of judgment for a specified sum. Second—If it be money due, or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due, or to become due. Third—If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

Filed with Clerk of Court.

J. C.

1422. SEC. 361. The statement shall be filed with the Clerk of the Court in which the judgment is to be entered, who shall indorse upon it, and enter in the judgment book a judgment of such Court for the amount confessed, with ten dollars costs. The judgment and affidavit, with the judgment indorsed, shall thereupon become the judgment roll.

CHAPTER 3.—SUBMITTING A CONTROVERSY WITHOUT ACTION.

Submission of controversy without action.

1423. SEC. 362. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any Court which should have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The Court shall thereupon hear and determine the case, and render judgment thereon, as if an action were pending.

Judgment, how entered.

1424. SEC. 363. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

How enforced.

1425. SEC. 364. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER 4.—OF ARBITRATIONS. (1)

Arbitration, submission of.

1426. SEC. 365. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

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(1) Our statutory proceedings in cases of arbitration are in derogation of the common law, and must be strictly pursued.—Steel v. Steel, 1 Nev., p. 27.

Whenever a statute prescribes certain specific acts to be done as prerequisite to the acquiring of jurisdiction, or the enforcement of a legal remedy, such acts must be substantially performed in the manner prescribed, in order to give validity to the proceeding.—Id.

The filing of the submission, and the entry of the same in the Clerk's register, in cases of arbitration, answer the purposes of the complaint and answer in ordinary actions, and, like them, must be filed before a hearing, trial, or judgment.—Id.

At common law, scarcely any matter short of a want of power or jurisdiction appearing upon the face of an award, is subject to question or inquiry, and every reasonable intendment should be made to uphold it. But in statutory awards no such liberal interpretation can be invoked to its aid. Its validity must be determined by the provisions of the statute authorizing it.—Id.

1427. SEC. 366. The submission to arbitration shall be in writing, and may be to one or more persons. **How made.**

1428. SEC. 367. It may be stipulated in the submission that it be entered as an order of the Court, for which purpose it shall be filed with the Clerk of the Court where the parties, or one of them, reside. The Clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the Court to make an award, and the award may be enforced by the Court in the same manner as a judgment. If the submission be not made an order of the Court, it may be revoked at any time before the award is made. **Same, revocation of.**

1429. SEC. 368. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon. **Powers of arbitrators.**

1430. SEC. 369. All the arbitrators shall meet and act together during the investigation, but, when met, a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding. **Proceedings of.**

1431. SEC. 370. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the Court, the award shall be filed with the Clerk and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the Clerk in the judgment book, and shall thereupon have the effect of a judgment. **Award, how made.** **Effect of.**

1432. SEC. 371. The Court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing, before the same arbitrators, or not, in its discre-

On what grounds vacated. tion: First—That it was procured by corruption or fraud. Second—That the arbitrators were guilty of misconduct or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced. Third—That the arbitrators exceeded their powers in making their award; or that they refused or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed.

On what grounds modified. 1433. SEC. 372. The Court may, on motion, modify or correct the award where it appears: First—That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein. Second—When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted. Third—When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

Appeal. 1434. SEC. 373. The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before a motion is made shall not be subject to appeal.

Submission revoked. Amount recoverable. 1435. SEC. 374. If a submission to arbitration be revoked, and action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER 5.—OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF AN ACTION.

Offer to compromise not to prejudice. 1436. SEC. 375. The defendant may at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum, or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the Clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment he shall not recover costs, but shall pay the defendant's costs from the time of the offer. (1)

(1) Where a party who is prosecuting a suit for the recovery of land covenants, in case of recovery, to convey a part of the land recovered to another, and afterwards compromises the suit so as to prevent the possibility of recovery, he may be liable to his covenantee in damages, but the party in possession, who compromises the suit, is not affected by the previous existence of this covenant.—Stonecifer v. Yellow Jacket Co., 3 Nev., p. 38.

If the compromise had been fraudulently entered into by both parties, with a view of cheating the covenantee, then a Court of equity might have given relief.—Id.

A party in possession always has a right to buy his peace from one asserting an adverse claim, and such compromises will always be upheld where there is no fraud committed.—Id.

A party who has covenanted to convey, in the event of recovery, may be under obligation not to compromise the case so as to prevent the possibility of recovery. But no such obligation rests on defendant; he has a perfect right to buy his peace, regardless of all contracts between his opponent and others.—Id.

TITLE XI. [a]

Of witnesses, and of the manner of obtaining evidence.

CHAPTER 1.—OF WITNESSES.

Witnesses, who may be. J. C.

1437. SEC. 376. All persons, without exception, otherwise than as specified in this chapter, may be witnesses in any action or proceeding. Facts which, by the common law, would cause the exclusion of witnesses, may still be shown for the purpose of affecting their credibility.

Who not disqualified. J. C.

1438. SEC. 377. No person shall be disqualified as a witness in any action or proceeding on account of his opinions on matters of religious belief, or by reason of his interest in the event of the action or proceeding as a party thereto or otherwise; but the party or parties thereto, and the person in whose behalf such action or proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and be compellable to give evidence, either viva voce or by deposition, or upon a commission, in the same manner, and subject to the same rules of examination as other witnesses, on behalf of himself, or either or any of the parties to the action or proceeding.

Refusal to testify. J. C.

1439. SEC. 378. If a party refuse to attend and testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint, answer, or reply may be stricken out and judgment be taken against him; and he may be also, in the discretion of the Court, proceeded against as in other cases for a contempt.

Who shall not testify, etc. J. C.

1440. SEC. 379. No person shall be allowed to testify under the provisions of section three hundred and seventy-seven, when the other party to the transaction, or opposite party in the action, or the party for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person, and nothing contained in said section shall affect the laws in relation to attestation of any instrument required to be attested. (1)

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[a] All of Title Eleven is made applicable to Justices' Courts, so far as the same is consistent with the jurisdiction and powers of Justices' Courts, by Sec. 1639, post.

(1) SECTION THREE HUNDRED AND FORTY OF PRACTICE ACT.—The object which the Legislature had in view in passing section three hundred and forty of the Practice Act was to make even the parties to actions competent witnesses in all cases, except where an undue advantage might be gained thereby. By the phrase "adverse party" was meant the actual party to the transaction—he who could himself testify as to it.—Roney v. Buckland, 4 Nev., p. 45.

PARTY AS WITNESS AGAINST SURVIVING PARTNER.—When a surviving partner is sued for a loan for the use of the firm made to the deceased partner, and of the particulars of which the deceased partner only was cognizant, the plaintiff is *not a competent* witness in his own behalf.—Id.

[SECTION 340 OF THE OLD PRACTICE ACT.—All persons, without exception, including parties to, or those interested in the suit, except where the adverse party is dead, or where the opposite party shall be the administrator, executor, or legal representative of a deceased person, may be witnesses in any action or proceeding, except as otherwise provided in this chapter of this Act. No person offered as a witness shall be excluded on account of his opinions on matters of religious belief.]

Who shall not be witnesses. J. C. 1441. SEC. 380. Persons against whom judgment has been rendered upon a conviction for felony, unless pardoned by the Governor, or such judgment has been reversed on appeal, shall not be witnesses.

Same. J. C. 1442. SEC. 381. A husband shall not be a witness for or against his wife, nor a wife a witness for or against her husband; nor can either, during the marriage, or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. But this exception shall not apply to an action or proceeding by one against the other.

Same. J. C. 1443. SEC. 382. An attorney or counselor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Same. J. C. 1444. SEC. 383. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Same. J. C. 1445. SEC. 384. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient; *provided*, however, in any suit or prosecution against a physician or surgeon for malpractice, if the patient or party suing or prosecuting shall require or give such consent, and any such witness shall give testimony, then such physician or surgeon, defendant, may call any other physicians or surgeons as witnesses on behalf of defendant, without the consent of such patient or party suing or prosecuting.

Same. J. C.

1446. Sec. 385. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Judge or juror may be witness. J. C.

1447. Sec. 386. The Judge himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the Court or Judge to order the trial to be postponed, or suspended, and to take place before another Judge or jury.

Interpreters. J. C.

1448. Sec. 387. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him. Any person resident of the county may be summoned by any Judge or Court to appear before such Judge or Court to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpœna. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and punished accordingly.

CHAPTER 2.—Manner of Compelling the Attendance of Witnesses, and their Rights and Duties.

Attendance of witnesses. What subpœna may require. Fees in advance. J. C.

1449. Sec. 388. A subpœna may require not only the attendance of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents, or other things under his control, to be used as evidence. No person shall be required to attend as a witness before any Court, Judge, Justice, referee, or other officer, out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the county of trial; *provided*, that such witness shall have the right to demand payment in advance of his fees for one day's attendance, and his mileage to and from the place specified in the subpœna.

Subpœna, how issued. J. C.

1450. Sec. 389. The subpœna shall be issued as follows: First—To require attendance before a Court, it shall be issued in the name and under the seal of the Court before which the attendance is required. Second—To require attendance out of Court, before a Judge, referee, Justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this State, it shall be issued by the Judge, referee, Justice, or other officer before whom the attendance is required. Third—To require attendance before a Commissioner appointed to take testimony by a Court of a foreign country, or of the United States, or of any other State, or of a Territory of the United States, or any District Judge or Justice of the Peace of this State, it may be issued by a Judge or Justice of the Peace in places within their respective jurisdictions, with like power to enforce attendance and to punish contempt of such subpœna as such Judge or Justice could exercise if the subpœna directed the attendance of the witness before his own Court, in a matter pending therein.

How served. J. C. 1451. SEC. 390. The service of a subpœna shall be made by showing the original, and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

Same. J. C. 1452. SEC. 391. If a witness be concealed in a building or vessel so as to prevent the service of a subpœna upon him, any Court or Judge, or any officer issuing the subpœna, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Sheriff of the county serve the subpœna, and the Sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

Persons present required to testify. J. C. 1453. SEC. 392. A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such Court or officer.

Duty of witness. J. C. 1454. SEC. 393. It shall be the duty of a witness, duly served with a subpœna, to attend at the time appointed, with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain till the testimony is closed.

Questions witness must answer. J. C. 1455. SEC. 394. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact at issue would be presumed. But a witness shall answer as to the fact to his previous conviction for felony.

Disobedience of subpœna. J. C. 1456. SEC. 395. Disobedience to a subpœna, or a refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the Court or officer issuing the subpœna or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed or his answer stricken out.

Same. J. C. 1457. SEC. 396. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Failure to attend. J. C. 1458. SEC. 397. In case of failure of a witness to attend, the Court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the Sheriff of the county to arrest the witness and bring him before the Court or officer where his attendance was required.

Confined in jail, etc. J. C. 1459. SEC. 398. If the witness be a prisoner, confined in a jail or prison within this State for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production before a Court or officer, for the purpose of being orally examined, may be made as follows: First—By the Court itself in which the action or special proceeding is pending. Second—By a Judge of the Supreme Court or District Court where the action or proceeding is pending, if before a Judge or other person out of Court.

Same. J. C.

1460. SEC. 399. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Same. J. C.

1461. SEC. 400. If the witness be imprisoned in the county where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

Witness exonerated from arrest. J. C.

1462. SEC. 401. Every person who has been in good faith served with a subpœna to attend as a witness before a Court, Judge, Commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

Liability of officer making arrest. J. C.

1463. SEC. 402. The arrest of a witness contrary to the last section shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption and make an affidavit, stating, first, that he has been served with a subpœna to attend as a witness before a Court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and, second, that he has not been thus served by his own procurement, with the intention of avoiding an arrest.

CHAPTER 3.—ON AFFIDAVITS.

Affidavits, how taken. J. C.

1464. SEC. 403. An affidavit to be used before any Court, Judge, or officer of this State may be taken before any Judge or Clerk of any Court, or any Justice of the Peace or Notary Public in this State.

In another State, etc. J. C.

1465. SEC. 404. An affidavit taken in another State, or in a Territory of the United States, to be used in this State, shall be taken before a Commissioner appointed by the Governor of this State to take affidavits and depositions in such other State or Territory, or before any Judge of a Court of record having a seal.

In foreign country. J. C.

1466. SEC. 405. An affidavit taken in a foreign country to be used in this State shall be taken before an Embassador, Minister, or Consul of the United States, or before any Judge of a Court of record having a seal in such foreign country.

How certified when taken out of State. J. C.

1467. SEC. 406. When an affidavit is taken before a Judge of a Court in another State, or in a Territory of the United States, or in a foreign country, the genuineness of the signature of the Judge, the existence of the Court, and the fact that such

Judge is a member thereof, shall be certified by the Clerk of the Court, under the seal thereof.

CHAPTER 4.—OF DEPOSITIONS TAKEN IN THIS STATE.

Depositions, in what case may be taken.

J. C.

1468. SEC. 407. The testimony of a witness in this State may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, after a question of fact has arisen therein, in the following cases: First, when the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended; second, when the witness resides out of the county in which his testimony is to be used; third, when the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required; fourth, when the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend, or resides within the county, but more than fifty miles from the place of trial.

How taken.

J. C.

1469. SEC. 408. Either party may have the deposition of a witness in this State taken before any Judge or Clerk of a Court, or any Justice of the Peace or Notary Public in this State, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, and his residence is unknown to the plaintiff, the notice required by this section may be served upon the Clerk of the Court where the action is pending. Such notice shall be at least five days, and, in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person upon whom the notice is served, unless, for a cause shown, a Judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

Manner of examination of.

J. C.

1470. SEC. 409. Either party may attend such examination, and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the Judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the Clerk of the Court in which the action is pending, or to such person as the parties, in writing, may agree upon, and either delivered by the Judge or officer to the Clerk or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

1471. SEC. 410. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it. **May be read by either party. J. C.**

CHAPTER 5.—OF DEPOSITIONS TAKEN OUT OF THIS STATE.

1472. SEC. 411. The testimony of a witness out of the State may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, at any time after a question of fact has arisen therein. **Taken out of the State J. C.**

1473. SEC. 412. The deposition of a witness out of this State shall be taken upon commission issued from the Court, under the seal of the Court, upon an order of the Judge or Court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or, if they do not agree, to any Judge or Justice of the Peace selected by the officer granting the commission, or to a Commissioner appointed by the Governor of this State to take affidavits and depositions in other States or Territories. (1) **How taken. J. C.**

(1) A commission to take a deposition, authenticated by the certificate of the Clerk under the seal of the Court, and issued in pursuance of a former order of the Court, is sufficient authority for taking the testimony of a witness.—Smith v. North American Company, 1 Nev., p. 423.

Where the parties to a suit agree that a deposition may be taken at a certain place, during a certain month, before T., a Notary Public in another State, the deposition certified by T., made under his official seal as a Notary, may be read by either party without other proof that T. was a Notary when the deposition was taken. The seal is prima facie evidence of his official character.—Sargent v. Collins, 3 Nev., p. 260.

Per JOHNSON, J., dissenting.—When parties to a suit agree that the deposition of a witness may be taken at a certain place, out of the State, on the day of a certain month, before F. J. T., a Notary Public, the deposition cannot be read without proof, beyond his own certificate, that F. J. T. was a Notary when the deposition was taken. His seal in such caee is not evidence of his official character.—Id.

If the agreement admits T. was a Notary when entered into, it does not admit that he would continue to be a Notary until the taking of the deposition.—Id.

Although parties may agree that a private individual may take depositions, still, if they consent that a certain person holding office may, as such officer, take a deposition, it cannot be held that they consented he might take it as a private individual.—Id.

When two cases are pending in the same Court, between the same parties, a deposition may be taken upon one notice, affidavit, and commission, to be read in both cases.—Scott v. The Bullion Mining Co., 2 Nev., p. 81.

A deposition taken in one case may be used between the same parties in another; so a deposition entitled in two cases between the same parties may be used in either.—Id.

Where the deposition of the same witness is taken twice, and it appears that the first examination covered the whole ground of controversy, and was regularly taken, the Court might, perhaps, with propriety refuse to hear the second deposition. But if the first deposition is complete, the regular method would be to appear and contest the issuance of the second commission.

Settling interrogatories. J. C.

1474. SEC. 413. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the Judge or officer granting the order for the commission, at a day fixed in the order, or at the time of granting the order for commission, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Commission, what to authorize. J. C.

1475. SEC. 414. The commission shall authorize the Commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories in respect to the question in dispute, and to certify the deposition to the Court, in a sealed envelope directed to the Clerk or other person designed or agreed upon, and forwarded to him by mail or other usual channel of conveyance. (1)

(1) Depositions will not be rejected for informality in the certificate of the officer before whom they are taken, when it appears that both parties were present, and the witnesses were cross-examined.—Lockhart v. Mackie, 2 Nev., p. 294.

A stipulation of the parties to a suit may dispense with any certificate by the officer taking depositions.—Id.

It is too late to raise the objection in this Court, for the first time, that there was no proof of the absence of the witnesses whose depositions were read.—Id.

Postponement of trial on non-return. J. C.

1476. SEC. 415. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon evidence satisfactory to the Court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER 6.—OF PROCEEDINGS TO PERPETUATE TESTIMONY.

Testimony, how perpetuated.

1477. SEC. 416. The testimony of a witness may be taken and perpetuated as provided in this chapter.

1478. SEC. 417. The applicant shall present to a District Judge a petition verified by the oath of the applicant, stating: First, that the applicant expects to be a party to an action in a Court in this State, and, in such case, the name or names of the person or persons whom he expects will be adverse parties; or, second, that the proof of some fact or facts is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and, third, the name of the witness to be examined and his place of residence, and a general outline of the facts expected to be proved. Proceedings.

1479. SEC. 418. The Judge to whom such petition is presented shall make an order allowing the examination before any Judge of a Court of record, and prescribing the notice to be given, which notice, if the parties are known and reside in this State, shall be personally served on them, and if unknown, or non-residents, such notice shall be served on the Clerk of the county where the property to be affected by such testimony is situated, and a copy thereof published in some newspaper, to be designated by the Judge making the order. Same.

1480. SEC. 419. Upon proof of the service of the notice as provided in the last section, it shall be the duty of the Judge before whom the testimony is ordered to be taken to proceed to take the testimony of the witnesses named in said petition, upon the facts therein set forth, and the taking of the same may be continued from time to time, in the discretion of the Judge. Same.

1481. SEC. 420. The examination shall be by question and answer, unless the parties otherwise agree. The testimony, when completed, shall be carefully read to and subscribed by the witness, then certified by the Judge, and immediately thereafter filed in the office of the Clerk of the District Court of the county where it was taken, together with the order for the examination of the witness, the petition on which the same was granted, and the proof of service of the notice. Same.

1482. SEC. 421. The affidavits or other proof filed with the testimony, or certified copies thereof, shall be prima facie evidence of the facts stated therein. Effect of affidavit.

1483. SEC. 422. If the trial be had between the persons named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such testimony proves or tends to prove, upon proof of the death or insanity of the witness, or of his inability to attend the trial by reason of age, sickness, or settled infirmity, the testimony, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination. Depositions, when to be used as evidence

CHAPTER 7.—ADMINISTRATION OF OATHS AND AFFIRMATIONS.

Who are authorized to administer. J. C.

1484. SEC. 423. Every Court of this State, every Judge or Clerk of any Court, every Justice of the Peace, and every Notary Public, and every officer authorized to take testimony, or to decide upon the evidence in any proceeding, shall have power to administer oaths or affirmations.

How administered. J. C.

1485. SEC. 424. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Affirmation, form of. J. C.

1486. SEC. 425. Any witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed in the following form: "You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between —— and ——, shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

CHAPTER 8.—INSPECTION OF DOCUMENTS AND MISCELLANEOUS PROVISIONS AS TO RECORDS AND WRITINGS.

Court may order party to give copy. J. C.

1487. SEC. 426. Any Court in which an action is pending, or a Judge thereof may, upon notice, order either party to give to the other within a specified time an inspection and copy, or permission to take a copy of any book, document, or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defense therein. If compliance with the order be refused, the Court may exclude the book, document, or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the Court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

Evidence of contents of writing. J. C.

1488. SEC. 427. There shall be no evidence of the contents of a writing, other than the writing itself, except in the following cases: First—When the original has been lost or destroyed; in which case proof of the loss or destruction shall first be made. Second—When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice. Third—When the original is a record or other document in the custody of a public officer, or officer of a corporation. Fourth—When the original has been recorded and a certified copy of the record is made evidence by statute. Fifth—When the original consists of numerous accounts or other documents which cannot be examined in Court without great loss of time, and the evidence sought from them is only the general result of the whole. (1)

(1) EVIDENCE—ORAL RESULT OF EXAMINATION OF LONG ACCOUNTS.—Where it became material and relevant to know

the amount of money which should have been in the State Treasury on a certain day: *Held*, that it was competent, under section four hundred and twenty-seven of the Practice Act, as well as under the law independent of it, for an expert, who had made a full investigation of the accounts of the office, to state orally the result of his examination.—State v. Rhoades, 6 Nev., p. 352.

Alterations to be accounted for.

1489. SEC. 428. The party producing a writing as genuine, which has been altered, or appears to have been altered after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise. J. C.

Judicial record, how proved.

1490. SEC. 429. A judicial record of this State, or the United States, or of any Territory, may be proved by the production of the original, or a copy thereof certified by the Clerk, or other person having the legal custody thereof, under the seal of the Court, to be a true copy of such record. J. C.

Same.

1491. SEC. 430. The records and judicial proceedings of the Courts of any other State of the United States, or of any Territory, may be proved or admitted in the Courts of this State, by the attestation of the Clerk and seal of the Court annexed, if there be a seal, together with a certificate of the Judge, Chief Justice, or presiding magistrate, as the case may be, that the said attestation is in due form. J. C.

Of foreign countries.

1492. SEC. 431. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the Clerk, with the seal of the Court annexed, if there be a Clerk and seal, or by the legal keeper of the record, with the seal of his office annexed, if there be a seal, to be a true copy of such record, together with a certificate of a Judge of the Court, that the person making the certificate is the Clerk of the Court, or the legal keeper of the record, and in either case that the signature is genuine, and the certificate in due form; and, also, together with the certificate of the Minister or Embassador of the United States, or of a Consul of the United States, in such foreign country, that there is such a Court, specifying generally the nature of its jurisdiction, and verifying the signature of the Judge and Clerk, or other legal keeper of the record. J. C.

Copy of, when admissible

1493. SEC. 432. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof: First—that the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it. Second—That such original was in the custody of the Clerk of the Court or other legal keeper of the same; and, Third—That the copy is duly attested by a seal, which is proved to be the seal of the Court where the record remains, if it be the record of a Court, or if there be no such seal, or if it be not a record of a Court, by the signature of the legal keeper of the original. J. C.

Printed volumes of statutes to be admitted as evidence.

J. C.

1494. SEC. 433. Printed copies in volumes of statutes, code, or other written law, enacted by any other State, or Territory, or foreign Government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the Courts and judicial tribunals of such State, Territory, or Government, shall be admitted by the Courts and officers of this State on all occasions as presumptive evidence of such laws.

Seal of Court, how impressed.

1495. SEC. 434. A seal of a Court or public office, when required to any writ, or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

TITLE XII.

Of the Writ of Certiorari and Mandamus.

CHAPTER 1.—THE WRIT OF CERTIORARI OR REVIEW. (1)

Denomination of.

1496. SEC. 435. The writ of certiorari may be denominated the writ of review.

(1) A writ of certiorari is not inhibited to a party aggrieved in all proceedings or actions wherein a right of appeal is given. Paul v. Armstrong, 1 Nev., p. 82.

Upon a return to a writ of certiorari, this Court can only inquire whether the tribunal certifying its proceedings has or not exceeded its jurisdiction.—Maynard v. Riley, 2 Nev., p. 313.

CERTIORARI—PROVINCE OF THE WRIT.—The province of the writ of certiorari extends only to the question of jurisdictional power.—State v. Board of Com. Washoe Co., 5 Nev., p. 317.

JURISDICTION THE QUESTION ON CERTIORARI.—The only question which can be inquired into on certiorari is whether the inferior Board or tribunal had jurisdiction to do the act sought to be reviewed.—Id.

RANGE OF INQUIRY ON CERTIORARI.—Where County Commissioners were required, on receiving a petition of certain voters, to do a certain act, and upon receiving a petition and satisfying themselves by evidence that it was from such voters, they did the act: *Held*, on certiorari, that they had acquired jurisdiction, and that whether their action was founded upon strictly legal or sufficient evidence, was not within the province of the inquiry.—Fall v. Com. Humboldt Co., 6 Nev., p. 100.

QUESTION INVOLVED ON CERTIORARI.—Where, on application of a person to equalize as to his own property the subsequent assessment roll, as provided in the Supplemental Revenue Act of 1867 (Stats. 1867, p. 111), the County Commissioners ordered the entire subsequent assessment roll to be stricken out; and their proceedings were carried by certiorari to the

Supreme Court: *Held*, that the question before the Supreme Court was solely as to whether the Commissioners had the authority to make the order striking out the entire roll, and that it could not consider the question as to the authority to equalize or discharge the assessment of the particular person making the application.—Swift v. Commissioners of Ormsby Co., 6 Nev., p. 95.

HUMBOLDT COUNTY SEAT OF JUSTICE—EVIDENCE.—A petition having been presented to the County Commissioners of Humboldt County to remove the seat of justice, as provided by law (Stats. 1867, p. 78), and the Commissioners having determined, from examinations and affidavits, that petitioners were legal voters, and having thereupon ordered an election: *Held*, on certiorari, that the evidence by affidavit was all that was necessary to give the Commissioners jurisdiction to make the order; and that, as the question on certiorari was confined to jurisdiction, no further inquiry could be made.—Nevada ex rel. Fall v. Com. Humboldt Co., 6 Nev., p. 100.

1497. SEC. 436. This writ may be granted on application by any Court of this State, except a Justice's, or Recorder's, or Mayor's Court; the writ shall be granted in all cases when an inferior tribunal, Board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, Board, or officer, and there is no appeal, nor, in the judgment of the Court, any plain, speedy, and adequate remedy. **By what Court and in what cases granted.**

1498. SEC. 437. The application shall be made on affidavit by the party beneficially interested, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice. **Application for, how made.**

1499. SEC. 438. The writ may be directed to the inferior tribunal, Board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the Clerk, if there be one, shall return the writ with the transcript required. **To whom directed.**

1500. SEC. 439. The writ of review shall command the party to whom it is directed to certify fully to the Court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceeding (describing or referring to them with convenient certainty), that the same may be reviewed by the Court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed. **Writ, what to command.**

1501. SEC. 440. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the Court, but if omitted, the power of the inferior Court or officer shall not be suspended nor the proceedings stayed. **Same.**

1502. SEC. 441. The writ shall be served in the same manner as a summons in civil action, except when otherwise expressly directed by the Court. **How served.**

Review upon, extent of. 1503. SEC. 442. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, Board, or officer has regularly pursued the authority of such tribunal, Board, or officer.

Return of. 1504. SEC. 443. If the return to the writ be defective, the Court may order a further return to be made. When a full return has been made, the Court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below. Judgment.

Copy to be transmitted. 1505. SEC. 444. A copy of the judgment, signed by the Clerk, shall be transmitted to the inferior tribunal, Board, or officer having the custody of the record or proceeding certified up.

Judgment roll. 1506. SEC. 445. A copy of the judgment, signed by the Clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the Supreme Court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action. Appeal.

CHAPTER 2.—THE WRIT OF MANDATE OR MANDAMUS. (1)

Writ denominated. 1507. SEC. 446. The writ of mandamus may be denominated the writ of mandate.

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(1) As an affidavit on which an alternative writ of mandamus issues is required to be served with the writ, and it is the affidavit and not the writ which is required to be answered, it would seem unnecessary that the latter should contain all the allegations of the affidavit.—Curtis v. McCullough, 3 Nev., p. 202.

There being no other speedy and adequate remedy for the relator, mandamus is the proper remedy in the case made.—Id.

Mandamus is the proper remedy to put one into an office where the title of the relator is clear, and no other person is claiming the office under color of right.—Id.

The power conferred on this Court by the Constitution to issue writs of mandamus, quo warranto, etc., is an original jurisdiction, and not merely auxiliary to its appellate jurisdiction.—Id.

Where the affidavit for an alternative writ of mandamus shows that the relator was appointed to a certain office or agency by the Board of Trustees of a foreign corporation, at a meeting of such Board, legally called, an answer denying the legality of the call, appointment, etc., without stating any facts to show the illegality of the call, the meeting, and action of the Board, raises no issue of fact, and is a mere nullity.—Id.

It being shown by the affidavit and answer that the relator was entitled to the office when he applied for the alternative writ, and so also when the original answer was filed, he is entitled to his costs incurred up to that time.—Id.

A supplemental answer having shown that relator was legally removed from office, and defendant appointed since the filing of the original answer, the peremptory writ must be refused.—Id.

MANDAMUS.—Under the Act of 1869, providing for the transfer of certain records and suits from Lander to White Pine County (Stats. 1869, p. 137): *Held*, that it was the duty of the County Clerk of Lander County to transfer the records and suits therein directed to be transferred, and that he could be compelled to do so by mandamus.—Hooten v. McKinney, 5 Nev., p. 194.

MANDAMUS—REVIEW OF ACTION OF REGISTRY AGENTS.—Under Secs. 6 and 8 of the Registry Law (Stats. 1869, p. 140), the functions of the writ of mandamus are enlarged so as to allow a hearing of evidence, and an enforcement by such writ of the proper registration of an elector, or the erasure of a name improperly registered: being in effect a review of judicial or discretionary action of the registry agent.—McGuire v. Waterman, 5 Nev., p. 323.

MANDAMUS NOT ISSUED WHEN FRUITLESS.—A mandamus will not issue to require the performance of a duty, unless it appear that the defendant has it in his power to perform the duty required.—Id.

ELKO COUNTY REGISTRATION.—Where the Act to create Elko County (Stats. 1869, p. 153,) required certain registry agents to register the names of electors before June 21st, 1869, and after that date a mandamus was issued to compel one of them to erase names improperly registered: *Held*, that the registry agent was *functus officio;* that the writ consequently could not be complied with, and that it was therefore improperly issued.—Id.

MANDAMUS, ITS FUNCTION.—The office of mandamus may be to compel the action, but it cannot be to correct the errors of an inferior Court. When such Court has acted, its action, however informal or erroneous, cannot be set aside or reversed by such writ.—Treadway v. Wright, 4 Nev., p. 119.

DISMISSAL OF APPEAL FROM JUSTICE'S COURT.—Where a District Court dismissed an appeal from a Justice's Court, on the ground that the notice of appeal was not duly stamped: *Held*, that however erroneous the action of the District Court, mandamus would not lie to compel it to reinstate the cause and try it on the merits.—Id.

Cavanaugh v. Wright, 2 Nev., p. 166, as to the propriety of mandamus to compel an inferior Court to proceed with a trial, cited with approval.—Id.

MANDAMUS TO COMPEL TRUSTEES TO CALL ELECTION.—A failure on the part of the first Board of Trustees of a mining corporation, for a period of nearly two months after the expiration of the first six months of the existence of the corporation, to call an election of their successors, makes out a case of neglect and failure on their part to perform their duty; and in such case they may be compelled by mandamus to call an election at the earliest practicable day.—Flagg v. Trustees Lady Bryan Co., 4 Nev., p. 400.

NEGLECT OF ONE DUTY NO EXCUSE FOR NEGLECT OF ANOTHER.—Though the Act of March 10, 1865, for the formation of corporations, requires the first Board of Trustees, whose term is fixed at six months, to fix the time of election of their successors by a by-law, the omission to adopt such a by-law is no excuse for their failure to call the election, or any reason why a mandamus should not issue compelling them to call it. Id.

EXTENT OF REQUIREMENTS OF WRIT OF MANDAMUS.—A writ of mandamus, requiring a Board of Trustees of a mining corporation to call an election, obliges them to take the proper steps for such election in the manner provided by law.—Id.

CONSTRUCTION OF PLEADING.—A petition for a mandamus to compel the calling of a first annual meeting of the stockholders of a mining corporation, for the election of the second Board of Trustees, alleged that such meeting should have been held on a certain day two months before; that it was not called or held; that, in consequence of the failure to call it, the petitioner requested the incumbent Board of Trustees, in writing, to call such meeting at as early a day as practicable; and that the incumbent Board refused, and continued to refuse to call such meeting, or any meeting for the election of Trustees: *Held*, that though as a pleading the petition might have been more explicit on the point that no election had been held, it was not so defective as to warrant a refusal of the writ on the ground of a want of a showing of that fact.—Id.

ANNUAL ELECTION OF TRUSTEES MUST BE HELD.—On an application for a mandamus against the first Board of Trustees of a mining corporation, to compel them to call a meeting of the stockholders for the election of a new Board of Trustees, after the first six months had expired, the respondents objected that after the commencement of the proceedings the petitioner and others had called a meeting of the stockholders, at which they voted to expel and remove the first Trustees, and appoint others to act for the company, and that such action was illegal: *Held*, no answer to the petition for mandamus, for the reason that if such action was illegal, as claimed, it was void and of no effect; and if not illegal and void, it did not obviate the necessity of an election.—Id.

MANDAMUS—COMMAND OF WRIT.—Where a discretion is to be exercised by an officer as to the manner in which an act may be done, or the act depends upon his judgment, a writ of mandate directed to him will not control his discretion, but only command him to act without in any way interfering with the manner of his action; but where, on the contrary, a specific act is required to be done, and no discretion given, the writ may command the doing of the very act itself.—Humboldt Co. v. Churchill Co., 6 Nev., p. 30.

MANDAMUS—PREVIOUS DEMAND WHEN NECESSARY.—When the performance of the duty sought to be enforced by mandamus is of a character that could not be expected to be performed until demanded, the writ should not issue until demand made; but when the law unconditionally requires the doing of the specified act, no demand is necessary.—Id.

MANDAMUS—OMISSION OF DUTY BY COUNTY COMMISSIONERS.—Where County Commissioners were by statute absolutely required to set apart certain funds in the treasury for a specific purpose, and refused or neglected to do so: *Held*, that mandamus was the only plain, speedy, and adequate remedy to compel them to do their duty.—Id.

1508. SEC. 447. It may be issued by any Court in this State, except a Justice's, to any inferior tribunal, corporation, Board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, Board, or person. By what Court and in what cases may issue.

1509. SEC. 448. This writ shall be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested. Same.

1510. SEC. 449. The writ shall be either alternative or peremptory. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the Court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted. To be alternative or peremptory.

1511. SEC. 450. When the application to the Court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the Court, whether the adverse party appear or not. When alternative or peremptory to be issued.

1512. SEC. 451. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the Court may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action. Answer to writ.

1513. SEC. 452. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the Court may, in its discre- When Court may order jury trial.

tion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the Court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

Objections to sufficiency of answer.

1514. SEC. 453. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

New trial.

1515. SEC. 454. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in section one hundred and ninety-seven. The motion for new trial may, upon reasonable notice, be brought on before the Judge of the Court in which the cause was tried, either in term or vacation. If a new trial be granted, the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

Duty of Clerk to transmit verdict.

Argument of application.

1516. SEC. 455. If no notice for a new trial be given, or, if given, be denied, the Clerk, within five days after the rendition of the verdict, or denial of the motion, shall transmit to the Court in which the application for the writ is pending, a certified copy of the verdict, attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

Same.

1517. SEC. 456. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in section four hundred and fifty-two, but only such matters as may be explained or avoided by a reply, the Court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the Court shall proceed to hear, or fix a day for hearing, the argument of the case.

Judgment and execution.

1518. SEC. 457. If judgment be given for the applicant, he shall recover the damages which he shall have sustained as found by the jury, or as may be determined by the Court or referees, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and peremptory mandate shall also be awarded without delay.

Writ, how served.

1519. SEC. 458. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court.

Refusal.

Fine for disobeying peremptory mandamus

1520. SEC. 459. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, Board, or person, if it appear to the Court that any member of such tribunal, corporation, or Board, or such person, upon whom the writ has been personally served, has, without just excuse, refused or neglected to pay the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a Judge or officer who draws a salary from the State or county, a certified copy of the order shall be forwarded to the Controller or County Treasurer, as the case may be, and the amount thereof may be retained from the salary of such Judge or officer. Such Judge or officer, for his willful disobedience, shall also be deemed guilty of a misdemeanor in office.

TITLE XIII.

Of contempts and their punishments.

1521. SEC. 460. The following acts or omissions shall be deemed contempts: First—Disorderly, contemptuous, or insolent behavior towards the Judge whilst holding Court or engaged in his judicial duties at chambers, or towards referees or arbitrators, while sitting on a reference or arbitration, or other judicial proceeding. Second—A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Court, or in its immediate vicinity, tending to interrupt the due course of a trial, or other judicial proceeding. Third—Disobedience or resistance to any lawful writ, order, rule, or process issued by the Court or Judge at chambers. Fourth—Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness. Fifth—Rescuing any person or property in the custody of an officer by virtue of an order or process of such Court or Judge at chambers. Sixth—Disobedience to the order or direction of the Court made pending the trial of an action, in speaking to or in the presence of a juror concerning an action in which such juror has been impaneled to determine, or in any manner approaching or interfering with such juror with the intent to influence his verdict. **Contempt, what deemed.**

1522. SEC. 461. When a contempt is committed in the immediate view and presence of the Court or Judge at chambers, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Court or Judge at chambers, an affidavit shall be presented to the Court or Judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators. **When punishable summarily.**

1523. SEC. 462. When the contempt is not committed in the immediate view and presence of the Court or Judge, a warrant of attachment may be issued to bring the person charged to answer, or without a previous arrest a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order, to show cause. **Attachment for, when issuable.**

Bail.

1524. SEC. 463. Whenever a warrant of attachment is issued pursuant to this chapter, the Court or Judge shall direct, by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

Duty of Sheriff.

1525. SEC. 464. Upon executing the warrant of attachment, the Sheriff shall keep the person in custody, bring him before the Court or Judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Discharge from arrest

1526. SEC. 465. When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he shall be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the Court or Judge thereupon; or they will pay as may be directed the sum specified in the warrant.

Return of warrant.

1527. SEC. 466. The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested, by the return day specified therein.

Investigation of charges.

1528. SEC. 467. When the person arrested has been brought up or appeared, the Court or Judge shall proceed to investigate the charge, and shall hear any answer which the person arrested shall make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Penalty, if found guilty.

1529. SEC. 468. Upon the answer and evidence taken, the Court or Judge shall determine whether the person proceeded against is guilty of the contempt charged; and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

Same, for omission to perform acts within power.

1530. SEC. 469. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act shall be specified in the warrant of commitment.

Indictment

1531. SEC. 470. Persons proceeded against according to the provisions of this chapter shall also be liable to indictment for the same misconduct, if it be an indictable offense, but the Court before which a conviction is had on an indictment, in passing sentence shall take into consideration the punishment before inflicted.

Proceedings when defendant does not appear.

1532. SEC. 471. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the Court or Judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

1533. SEC. 472. Whenever, by the provisions of this chapter, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a Court or Judge, the inability, from illness or otherwise, of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance. Duty of officer having person in custody.

1534. SEC. 473. In cases of contempt the punishment shall be by fine and imprisonment; but no fine shall exceed the sum of five hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in section four hundred and sixty-nine. Contempt, punishment of.

TITLE XIV.

Of costs.

1535. SEC. 474. The measure and mode of compensation of attorneys and counselors shall be left to the agreement, express or implied, of the parties, but there shall be allowed to the prevailing party in any action in the Supreme and District Courts, his costs and necessary disbursements, in the action or special proceeding in the nature of an action. Compensation of attorneys.

1536. SEC. 475. Costs shall be allowed of course to the plaintiff, upon a judgment in his favor in the following cases: First—In an action for the recovery of real property. Second—In an action to recover the possession of personal property, when the value of property amounts to three hundred dollars or over, such value shall be determined by the jury, Court, or referee by whom the action is tried. Third—In an action for the recovery of money or damages, where plaintiff recovers three hundred dollars or over. Fourth—In a special proceeding in the nature of an action. When allowed of course to plaintiff.

1537. SEC. 476. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this State; but the disbursements of the plaintiff shall be allowed to him in each action. When several actions on one bond, etc.

1538. SEC. 477. Costs shall be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in section four hundred and seventy-five, and in a special proceeding in the nature of an action. When allowed of course to defendant.

1539. SEC. 478. In other actions than those mentioned in section four hundred and seventy-five, costs may be allowed or not, and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the Court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than three hundred dollars, nor in an action to recover the possession of personal When allowed or not.

property, when the value of the property is less than three hundred dollars. (1)

(1) COSTS ON MOTIONS.—It is within the power of a Court to permit the costs of motions made during the progress of the trial, such as to quash the service of summons, etc., to abide the event of the suit; there being no statute or rule of practice requiring the costs of such motions to be taxed against the losing party.—Caples v. Central Pacific R. R. Co., 6 Nev., p. 265.

COSTS WHERE RECOVERY LESS THAN THREE HUNDRED DOLLARS.—The provision of section four hundred and seventy-eight of the Practice Act, that no costs shall be allowed when less than three hundred dollars is recovered, is obviously confined to cases in the District Courts, and was evidently adopted to prevent the bringing of actions in those Courts which should or might be instituted in Justices' Courts.—Klein v. Allenbach, 6 Nev., p. 159.

When plaintiff fails to recover against all defendants.

1540. SEC. 479. When there are several defendants in the actions mentioned in section four hundred and seventy-five, not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the Court shall award costs to such of the defendants as have judgment in their favor.

Appeal.

1541. SEC. 480. In the following cases the costs of an appeal shall be in the discretion of the Court: First—When a new trial is ordered. Second—When a judgment is modified.

References.

1542. SEC. 481. The fees of referees shall be fifteen dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Costs, when trial postponed.

1543. SEC. 482. When an application is made to a Court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the Court or referee, as a condition of granting the same.

When defendant has tendered amount due.

1544. SEC. 483. When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in Court, for the plaintiff, the amount so tendered, and the allegations be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

In action where administrator, etc., is party.

1545. SEC. 484. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting and defending in his own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the Court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

1546. SEC. 485. When the decision of a Court of inferior jurisdiction in a special proceeding is brought before a Court of

On review.

higher jurisdiction for a review, in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the Court may direct, according to the nature of the case.

Memorandum of costs.

J. C.

1547. SEC. 486. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the Clerk of the Court, within two days after the verdict or decision of the Court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum shall be verified by the oath of the party or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. (a) (1)

(a) Sec. 486 is made applicable to Justices' Courts by Sec. 1647, post.

(1) The cost bill was filed within two days after "the decision of the Court."—Sholes v. Stead & Hunt, 2 Nev., p. 107.

If no cost bill was filed within two days after date of order for judgment, none could afterwards be filed.—Howard v. Richard & Richard, 2 Nev., p. 128.

To be included in judgment.

1548. SEC. 487. The Clerk shall include in the judgment entered up by him any interest in the verdict or decision of the Court or referee, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained; and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank to be left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

Security for costs.

1549. SEC. 488. When a plaintiff in an action resides out of the State, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the Clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the Court or Judge, upon proof that the original undertaking is insufficient security, and proceeding in the action stayed until such new or additional undertaking be executed and filed.

Same.

1550. SEC. 489. Each of the sureties on the undertaking mentioned in the last section shall annex to the same an affidavit that he is a resident and householder, or freeholder, within the county, and is worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Same.

1551. SEC. 490. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the Court or Judge may order the action to be dismissed.

TITLE XV.

Of motions, orders, notices, service of papers, and miscellaneous provisions.

Motions, etc. 1552. SEC. 491. Every direction of a Court or Judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Where to be made. 1553. SEC. 492. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

Notice of. 1554. SEC. 493. When a written notice of a motion is necessary, it shall be given, if the Court be held in the same district where both parties reside, five days before the time appointed for the hearing, otherwise ten days; but the Court or Judge may prescribe a shorter time.

May be transferred 1555. SEC. 494. When a notice of a motion is given, or an order to show cause is made returnable before a Judge out of Court, and at the time fixed for the motion, or on the return day of the order, the Judge is unable to hear the parties, the matter may be transferred by his order to some other Judge before whom it might originally have been brought.

Service of papers, how made. 1556. SEC. 495. Written notices and other papers, when required to be served on the party or an attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title shall be applicable to original or final process, or any proceedings to bring a party into contempt. (a)

J. C.

Same. 1557. SEC. 496. The service may be personal, by delivery to the party or his attorney, on whom the service is required to be made, or it may be as follows: First—If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, inclosed in an envelope, into the Post Office, directed to such attorney. Second—If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion, and if his residence be not known, by putting the same, inclosed in an envelope, into the Post Office, directed to such party.

J. C.

When served by mail. 1558. SEC. 497. Service by mail may be made, when the person making the service and the person on whom it is to be made reside at different places, between which there is a regular communication by mail.

J. C.

(a) Secs. 495 to 503, inclusive, and Secs. 506 to 508, inclusive, Title XV, are made applicable to Justices' Courts by Sec. 1650, post.

1559. SEC. 498. In case of service by mail, the notice or other paper, shall be deposited in the Post Office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and place of address. Same. J. C.

1560. SEC. 499. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail. (1) When defendant deemed to have appeared. J. C.

(1) The statute, having prescribed what shall be an appearance for certain purposes, does not preclude an appearance in a different manner for other purposes.—Curtis v. McCullough, 3 Nev., p. 202.

Although an alternative writ of mandamus may not properly be returnable in less than ten days after its issuance, yet if the respondent appears upon such writ and asks for time to make his answer, and that time is granted, he cannot afterwards be heard to complain that the writ was irregular as to the time when a return was required.—Id.

A general appearance not only waives defect in a writ, or summons, but gives jurisdiction over the person in cases where the writ was void.—Id.

1561. SEC. 500. When a plaintiff or a defendant who has appeared resides out of the State, and has no attorney in the action or proceeding, the service may be made on the Clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, shall be upon the attorney instead of the party, except of subpœnas, of writs, and other process issued in the suit, and of papers to bring him into contempt. Service after appearance, etc. J. C.

1562. SEC. 501. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom. Successive actions on same contract. J. C.

1563. SEC. 502. Whenever two or more actions are pending at one time between the same parties, and in the same Court, upon causes of action which might have been joined, the Court may order the actions to be consolidated into one. When may be consolidated. J. C.

1564. SEC. 503. An action may be brought by one person against another, for the purpose of determining an adverse claim which the latter makes against the former, for money or property, upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due the other, for which the plaintiff is bound as security. Actions to determine adverse claim. J. C.

1565. SEC. 504. The Clerk shall keep among the records of the Court a register of actions. He shall enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein. Register of actions.

Referees, majority may act.

1566. SEC. 505. When there are three referees, or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

Time, how computed. J. C.

1567. SEC. 506. The time within which an act is to be done, as provided in this Act, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded. ([a])

(a) Secs. 506 to 508, inclusive, made applicable to Justices' Courts by Sec. 1650, post.

Paper without the title of the action. J. C.

1568. SEC. 507. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Cause of action in another State. J. C.

1569. SEC. 508. When a cause of action has arisen in another State, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this State, except in favor of a citizen thereof who has held the cause of action from the time it accrued.

TITLE XVI.

Of proceedings in civil cases in Justices' Courts. ([a])

CHAPTER 1.—OF THE PARTIES AND THE TIME AND PLACE OF COMMENCING ACTIONS IN JUSTICES' COURTS.

Parties to actions in Justices' Courts. Jurisdiction.

1570. SEC. 509. The provisions of Title I of this Act, as to parties to actions, shall be applicable to actions of which a Justice's Court has jurisdiction. Justices' Courts shall have jurisdiction of the following actions and proceedings: First—Of an action arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed three hundred dollars. Second—Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed do not exceed three hundred dollars. Third—Of an action for a fine, penalty, or forfeiture, not exceeding three hundred dollars, given by statute or the ordinance of any incorporated or unincorporated city, town, or village. Fourth—Of an action upon a bond conditioned for the payment of money not exceeding three hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due. Fifth—Of an action upon a surety bond or undertaking, though the penalty exceed, if the amount claimed does not exceed three hundred dollars. Sixth—Of an action to recover the possession of personal property, when the value of such property does not exceed three hundred dollars. Seventh—To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed three hundred dollars. Eighth—Of actions for the possession of lands and tenements, where the relation of landlord and tenant exists. Ninth—Of actions when the possession of lands or tenements has been unlawfully or fraudulently obtained or withheld, in which case the proceedings shall be as prescribed by the Acts upon that subject. Tenth—Of proceedings respecting vagrants and disorderly persons. Eleventh—Of suits for the collection of taxes, where the amount of the tax sued for does not exceed three hundred dollars. The jurisdiction conferred by this section shall not extend to a civil action in which the title to real estate or mining claims, or questions to boundaries of land, are involved, or to actions to enforce mechanics' liens; and if questions of title to real property be involved, cases involving such questions shall be disposed of as hereafter provided in this Act. The Courts held by Justices of the Peace shall be denominated Justices' Courts. They shall have no terms, but shall always be open. Justices' Courts shall be held in their respective townships, precincts, or cities. (1) Same.

(a) Justices' Courts have jurisdiction in cases of foreclosure of liens, when the amount does not exceed three hundred dollars. (See Sec. 137, ante.) Criminal jurisdiction extended. (See Sec. 936, ante.) In contesting election of member of the Legislature, Justice of the Peace to take depositions. (See Sec. 2555, post.) Justices of the Peace have jurisdiction over cases for selling liquors to Indians. (See Sec. 2476, post.) Also for vending liquors, goods, etc., without license. (See Sec. 2456.)

(1) The organic Act of the Territory, limiting the jurisdiction of Justices of the Peace to cases where the debt or sum claimed does not exceed one hundred dollars, is applicable to an action in tort for damages as well as to an action on contract.—Armstrong v. Paul et al., 1 Nev., p. 134.

Courts of Justices of the Peace, being of special and limited jurisdiction, can take nothing by intendment or implication.—Paul v. Armstrong, 1 Nev., p. 82.

Per BROSNAN, J.—Consent of parties cannot give jurisdiction.—Id.

Where a statute prescribes the mode of acquiring jurisdiction, that mode must be complied with or the proceedings will be a nullity.—Id.

Courts of Justices of the Peace, being the mere creatures of statute, have no jurisdiction except that which is expressly granted to them by law.—Paul v. Beegan, 1 Nev., p. 327.

1571. SEC. 510. Parties in Justices' Courts may prosecute or defend in person or by attorney; and any person, on the request of a party, may act as his attorney, except that the Constable by whom the summons or jury process was served shall not appear or act on the trial in behalf of either party. May appear in person or by attorney

1572. SEC. 511. No person shall be held to answer to any summons issued against him from a Justices' Court, in a civil action, in any township, precinct, or city, other than the one in which he shall reside, except in the cases following: First—When there shall be no Justices' Court for the township, pre- Persons held to answer in township of their residence.

Same. cinct, or city, in which the defendant may reside, or no Justice competent to act in the case. Second—When two or more persons, jointly, or jointly and severally bound in debt or contract, or otherwise jointly liable in the same action, and reside in different townships, precincts, or cities of the same county, or in different counties, the plaintiff may prosecute his action in a Justices' Court of the township, precinct, or city in which any of the debtors or other person liable may reside. Third—In case of injury to the person, or to real or personal property, the plaintiff may prosecute his action in the township, precinct, or city where the injury was committed. Fourth—When personal property, unjustly taken or detained, is claimed, or damages therefor are claimed, the plaintiff may bring his action in any township, precinct, or city in which the property may be found, or in which the property was taken. Fifth—When the defendant is a non-resident of the county, he may be sued in any township, precinct, or city wherein he may be found. Sixth—When a person has contracted to perform any obligation at a particular place, and resides in another township, precinct, or city, he may be sued in the township, precinct, or city in which such obligation is to be performed, or in which he resides. Seventh—When the foreclosure of a mortgage, or the enforcement of a lien upon real or personal property is sought by action, the plaintiff may sue in the township, precinct, or city where the property is situated; *provided*, that in the county seat of any county, and also in every incorporated city, any Justice holding Court at such county seat or incorporated city, shall have jurisdiction when the defendant is found within the limits of such county seat or incorporated city, irrespective of the residence of the defendant, and irrespective of township or precinct lines. [As amended March 2, Stats. 1871, p. 103.]

Judgment upon confession. 1573. SEC. 512. Judgment upon confession may be entered up in any Justices' Court in the State specified in the confession. The provisions of Title X, Chapter 2, of this Act, shall apply to such confession, the word "Justice" being substituted for that of Clerk wherever it may occur. ([a])

(a) For Title X, Chapter 2, see Sec. 1420, ante, et seq.

Further jurisdiction 1574. SEC. 513. Justices' Courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences, or the place where the cause of action arose, or the subject matter of the action may exist.

CHAPTER 2.—SUMMONS, ARREST, ATTACHMENT, AND CLAIM OF PERSONAL PROPERTY.

Actions, how commenced. 1575. SEC. 514. Actions in Justices' Courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleadings of the parties without summons. In the latter case the action shall be deemed commenced at the time of appearance.

1576. SEC. 515. When a guardian is necessary, he shall be appointed by the Justice as follows: First—If the infant be a plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the Justice. Second—If the infant be defendant, the guardian shall be appointed at the time the summons is returned, or before the pleadings. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed; otherwise the Justice may appoint any suitable person who gives such consent. Guardians, how appointed.

1577. SEC. 516. The summons shall be addressed to the defendant by name, or if his name be unknown, by a fictitious name, and shall summon him to appear before the Justice at his office, naming its township, precinct, or city, and at a time specified therein, to answer the complaint of the plaintiff, for a cause of action therein described in general terms, sufficient to apprize the defendant of the nature of the claim against him; and in an action for money or damages shall state the amount for which the plaintiff will take judgment if the defendant fail to appear and answer. It shall be subscribed by the Justice before whom it is returnable. Summons, form of.

1578. SEC. 517. The time mentioned in the summons for the appearance of the defendant, and the time of service, shall be as follows: First—When the summons is accompanied with an order to arrest the defendant, it shall be returnable immediately. Second—When the defendant is not a resident of the township or city, or when the plaintiff is not a resident, it shall be returnable not more than two days from its date, and shall be served at least one day before the time for appearance, except in cases where the summons is to be served by publication, or out of the State, or by posting notices thereof, when it shall be made returnable at any time designated by the Justice, not exceeding four months from the date of its issuance. Third—In all other cases it shall be returnable in not less than two or more than ten days from its date, and shall be served at least two days before the time for appearance. Time of service and appearance

1579. SEC. 518. The summons shall be served by the Sheriff or a Constable of the county, or by any male citizen of the United States over twenty-one years of age, as follows: First—If the action be against a corporation, by a delivery of a copy to the President or other head of the corporation, or to the Secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a Director resident therein. Second—If against a minor under the age of fourteen years, by delivery of a copy to such minor, and also to his father, mother, or guardian; or if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is. How served.

Third—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by delivery of a copy to such guardian. Fourth—In all other cases, by delivery of the copy to the defendant personally.

Sections made applicable to Justices' Courts.

1580. SEC. 519. Sections thirty to thirty-five, both inclusive, of Title III of this Act, (a) are hereby made applicable to Justices' Courts, and proceedings therein—the word "Justice" being inserted wherever the word "Clerk" or "Judge" occurs, and the word "Constable" inserted wherever the word "Sheriff" occurs, and the word "complaint," whenever it occurs, being stricken out and disregarded; *provided*, that in actions upon contracts for the payment of money, the Justice may, in his discretion, instead of ordering publication of summons or the appointment of an attorney to appear for the defendant, order the service of the summons to be made by posting copies thereof in three public places in the township, within one day after the same is issued.

(a) For Secs. 30 to 35 see Secs. 1093 to 1098, inclusive.

When order to arrest may be indorsed, etc.

1581. SEC. 520. An order to arrest the defendant may be indorsed on a summons issued by the Justice, and the defendant may be arrested thereon by the Sheriff or Constable at the time of serving the summons, and brought before the Justice, and there detained until duly discharged in the following cases, arising after the passage of this Act: First—In an action for the recovery of money or damages on a cause of action arising upon a contract, express or implied, when the defendant is about to depart from the State, with intent to defraud his creditors; or where the action is for the willful injury to the person, or for taking, detaining, or injuring personal property. Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity. Third—When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought. Fourth—When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

Undertaking, etc.

1582. SEC. 521. Before an order of arrest shall be made, the party applying shall prove to the satisfaction of the Justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the Justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

When defendant may be taken before another Justice.

1583. SEC. 522. The defendant, immediately upon being arrested, shall be taken to the office of the Justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of defendant that he is a material witness in the action, the officer shall immediately take the defendant before the next Justice of the city, precinct, or township, who shall take cognizance of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

1584. SEC. 523. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff. Duty of officer making arrest.

1585. SEC. 524. The officer making an arrest shall keep the defendant in custody until duly discharged by order of the Justice. Same.

1586. SEC. 525. The defendant under arrest, on his appearance with the officer, may demand a trial immediately; and upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the time, or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff, beyond three hours, shall discharge the defendant from arrest; but the action may proceed notwithstanding, and the defendant shall be subject to arrest on the execution in the same manner as if he had not been so discharged. Defendant under arrest may demand immediate trial.

1587. SEC. 526. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute and file with the Justice an undertaking, with two or more sufficient sureties, to be approved by the Justice, to the effect that he will render himself amenable to the process of the Court during the pendency of the action, and such as may be issued, to enforce the judgment therein, or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this section, the Justice shall order the defendant to be discharged from custody. How defendant may obtain adjournment.

1588. SEC. 527. The following sections of Chapter 1, Title V, of this Act, shall be applicable to Justices' Courts and proceedings therein, to wit: Eighty to eighty-five, both inclusive; and the following of Chapter 2, same title, to wit: Ninety-nine to one hundred and two, both inclusive; one hundred and four and one hundred and seven to one hundred and ten, both inclusive; the word "Justice" being inserted in lieu of "Clerk" or "Judge" wherever they occur, and the word "Constable" in lieu of the word "Sheriff;" also sections one hundred and twenty-three to one hundred and forty-four, both inclusive; the word "Justice" being inserted in lieu of that of "Judge" and "Clerk" wherever it may occur; *provided*, that the writ of attachment shall be directed to the "Sheriff" or any Constable of any county of this State, and may be executed by the Constable, and wherever the word "Sheriff" occurs, the word "Constable" shall be deemed to be also inserted. (a) Sections applicable.

(a) For Secs. 80 to 85 of Chapter 1, Title V, see Sec. 1141, ante, et seq.; for Secs. 99 to 102, see Sec. 1160 et seq.; for Sec. 104, see Sec. 1165, ante; for Secs. 107 to 110, see Sec. 1168 et seq.; for Secs. 123 to 144, see Sec. 1184 et seq.

[NOTE.—Read "J. C." at Secs. 1162, 1163, 1165, 1168, 1169, 1170, 1171, and omit them at 1147.]

CHAPTER 3.—PLEADINGS AND TRIAL.

Pleadings defined.

1589. SEC. 528. The pleadings in Justices' Courts shall be: First—The complaint by the plaintiff, stating the cause of action. Second—The answer by the defendant, stating the ground of the defense.

When to be in writing and verified.

1590. SEC. 529. The pleadings shall be in writing, and verified by the oath of the party, his agent or attorney, when the action is: First—For the foreclosure of any mortgage or the enforcement of any lien on real or personal property. Second—Of actions for the possession of lands or tenements.

Oral to be entered. Written to be filed.

1591. SEC. 530. When the pleadings are oral, the substance of them shall be entered by the Justice in his docket; when in writing, they shall be filed in his office, and a reference made to them in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Complaint, what to state.

1592. SEC. 531. The complaint shall state in a plain and direct manner the facts constituting the cause of action.

Answer, what to contain.

1593. SEC. 532. The answer may contain a denial of any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or a counterclaim upon which an action may be brought by the defendant against the plaintiff in a Justice's Court.

Denial.

1594. SEC. 533. A statement in answer, that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

When cause arises on instrument for payment of money.

1595. SEC. 534. When the cause of action or counterclaim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the Court, and to state that there is due to him thereupon from the adverse party a specified sum, which he claims to recover or set off. The Court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished, or if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence.

Instruments, genuineness of to be admitted.

1596. SEC. 535. If the plaintiff annex to his complaint, or file with the Justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

1597. SEC. 536. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the Court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded. Objections to pleadings.

1598. SEC. 537. A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the Court be satisfied that the adverse party has been misled to his prejudice thereby. Variance.

1599. SEC. 538. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The Court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the Court, not exceeding twenty dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment, nor shall an amendment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary. Amendments of pleadings.

1600. SEC. 539. The parties shall not be at liberty to give evidence upon any question which involves the title to, or the right of possession to, or the possession of, real property or mining claims, or upon any question involving boundaries to land, or the legality of any tax, impost, assessment, toll, or municipal fine, nor shall any issue presenting such question be tried by the Justice; and if it appear from the plaintiff's own showing, on the trial, or from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve either of such questions, the Justice shall suspend all further proceedings in the action, and certify the pleadings, or if the pleadings be oral, a transcript of the same, from his docket to the District Court for the county; and from the time of filing such pleadings or transcript with the Clerk of the District Court, such District Court shall have over the action the same jurisdiction as if it were originally commenced therein. Title to real property. Evidence not to be given.

1601. SEC. 540. If at any time before the trial it appear to the satisfaction of the Justice before whom the action is brought, by affidavit of either party, that such Justice is a material witness for either party, or if either party make affidavit that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before such Justice, by reason of the interest, prejudice, or bias of the Justice, on stating the facts upon which such belief is founded, the action shall be transferred to some other Justice of the same or neighboring township or precinct; and in case a jury be demanded, and affidavit of either party is made that he cannot have a fair and impartial trial, on account of the bias or prejudice of the citizens of the township or precinct against him, the action shall When action to be transferred

Same. be transferred to some other Justice of the Peace in the county, but only one transfer shall be allowed to either party. The Justice to whom an action may be transferred by the provisions of this section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The Justice ordering the transfer of the action to another Justice shall immediately transmit to the latter, on payment by the applicant of all Justices' and officers' costs unpaid and due from him, and the costs of making a copy of the docket for transmission, all the papers in the action, together with a certified transcript from his docket of the proceedings therein; *provided*, that if the applicant shall fail to pay said costs for the space of one hour, the Justice shall vacate the order changing the place of trial, and proceed to try the cause as though such order had never been made. The Justice to whom the case is transferred shall issue a notice stating the time and place when and where the trial will take place; which notice shall be served upon the parties by any officer authorized to serve process in a Justice's Court, or by any person specially appointed by the Justice for that purpose, at least one day before the trial.

Adjournment of trial. 1602. SEC. 541. The trial may be adjourned by consent or upon application of either party, without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows: First—The party asking the adjournment shall, if required by his adversary, prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial; and shall show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so. Second—That the party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance, be then taken by deposition before the Justice, which shall accordingly be done, and the testimony so taken may be read on the trial, with the same effect and subject to the same objections as if the witness were produced. But such objections shall be made at the time of taking the deposition. Third—The Court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

Same. 1603. SEC. 542. An adjournment may be had either at the time of joining issue or at any subsequent time to which the case may stand adjourned, on application of either party, for a longer period than ten days, but not to exceed four months from the time of the return day of the summons, upon proof, by the oath of the party or otherwise, to the satisfaction of the Justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced; that he has used due diligence to procure the evidence, and has been unable to do so, and that he expects to procure the evidence at the time stated by him; *provided*, that if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered or overruled as improper, the adjournment shall not be had.

1604. SEC. 543. No adjournment shall be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, with sureties, to be approved by the Justice, to the effect that they will pay to the opposite party the amount of any judgment that may be recovered against the party applying, in the money or currency claimed in the pleading of the plaintiff. Same.

1605. SEC. 544. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may nevertheless proceed at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs. When action may be dismissed.

1606. SEC. 545. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the Justice, and shall be on the same day, or within the next two days. The jury shall be summoned upon an order of the Justice, from the citizens of the city, precinct, or township, and not from the bystanders. Trial by jury, when demanded. Proceedings when jury trial demanded.

1607. SEC. 546. At the time appointed for the trial the Justice shall proceed to call from the jurors summoned the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number, not more than twelve nor less that four. Same.

1608. SEC. 547. If a sufficient number of competent and indifferent jurors do not attend, the Justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury. Same.

1609. SEC. 548 Either party may challenge the jurors. The challenges shall be either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth in section one hundred and sixty-four. Challenges for cause shall be tried by the Justice in a summary manner, who may examine the juror challenged, and witnesses. ([a]) Challenging jurors.

(a) For Sec. 164, see Sec. 1225, ante.

CHAPTER 4.—JUDGMENT AND EXECUTION.

1610. SEC. 549. Judgment that the action be dimissed without prejudice to a new action may be entered with costs in the following cases: First—When the plaintiff voluntarily dismisses the action before it is finally submitted. Second—When he fails to appear at the time specified in the summons, or upon Judgment of dismissal without prejudice, in what case.

adjournment, or within one hour thereafter. Third—When it is objected at the trial and appears by the evidence that the action is brought in the wrong county, township, city, or precinct; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

Judgment by default.

1611. SEC. 550. When the defendant fails to appear and answer, judgment shall be given for the plaintiff as follows: First—When a copy of the account, note, bill, or other obligation upon which the action is brought was filed with the Justice at the time the summons was issued, judgment shall be given without further evidence, for the sum specified in the summons. Second—In other cases, the Justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceeding the amount specified in the summons.

When jury not demanded.

1612. SEC. 551. Upon issue joined, if a jury trial be not demanded, the Justice shall hear the evidence and decide all questions of fact and of law, and render judgment accordingly.

Judgment, how and when entered.

1613. SEC. 552. Upon a verdict the Justice shall immediately render judgment accordingly. When the trial is by the Justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody. In other cases it shall be entered within four days after the close of the trial. If the action be on contract against two or more defendants, and the summons is served on one or more, but not on all, the judgment shall be entered up only against those who were served or have voluntarily appeared, if the contract be a several or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all and the individual property of the defendants served or who have voluntarily appeared in the action. In an action on a contract or obligation for the direct payment of money, made payable in a specified or agreed kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict or decision of the Court, shall follow the contract or obligation, and be made payable in the kind of money or currency specified therein or agreed thereby. (1)

(1) A Justice should enter up judgment immediately on the rendition of a verdict. But if he omits to do so the day the verdict is rendered, still he may complete his record by afterwards entering the judgment.—Fugett v. Cox, 2 Nev., p. 370.

The filing of a notice of appeal and undertaking on appeal in a Justice's Court, after the rendition of a verdict by the jury, but before the entry of judgment thereon, does not deprive the Justice of authority to enter up judgment on the verdict.—Id.

When amount exceeds jurisdiction

1614. SEC. 553. When the amount found due to either party exceeds the sum for which the Justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

1615. SEC. 554. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and, if he recover, deduct from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided.

When defendant offers to allow judgment for specified sum.

1616. SEC. 555. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment and entered in the docket.

Judgment when defendant is subject to arrest.

1617. SEC. 556. When the prevailing party is entitled to costs by this chapter, the Justice shall add their amount to the verdict, or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of defendant for the amount of such costs.

Costs to be included in judgment.

1618. SEC. 557. The Justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the Clerk of the District Court for the county where the judgment was rendered. The time of the receipt of the transcript by the Clerk shall be noted by him thereon and entered in the docket, and from that time executions may be issued by the Clerk on such judgments, to the Sheriff of any other county of the State, in the same manner as upon judgments recovered in the higher Courts. All process upon judgments recovered in Justices' Courts, to be executed within the same county, shall be issued by the Justice or his successors in office. No judgment rendered by a Justice of the Peace shall create any lien upon any lands of the defendant, unless a transcript of such judgment, certified by the Justice, be filed and recorded in the office of the County Recorder. When such transcript is to be filed in any other county than that in which the Justice resides, such transcript shall be accompanied with a certificate of the County Clerk as to the official character of the Justice. When so filed and recorded in the office of the Recorder for any county, such judgment shall constitute a lien upon and bind the lands and tenements of the judgment debtor, situated in the county where the transcript may be filed and recorded in favor of such judgment creditor, as if such judgment had been rendered in the District Court for such county.

Transcript of judgment.

Process on judgment, how issued.

Lien of judgment.

1619. SEC. 558. Execution for the enforcement of a judgment in a Justice's Court may be issued on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Execution may issue.

1620. SEC. 559. The execution, when issued by a Justice, shall be directed to the Sheriff or to a Constable of the county, and subscribed by the Justice by whom the judgment was rendered, or by his successor in office. It shall intelligibly refer to the judgment, by stating the names of the parties, and the

Form of execution.

name of the Justice before whom, and of the county and the township or city where, and the time when it was rendered, the amount of judgment, if it be for money, and the kind of money or currency in which it is payable, and if less than the whole is due, the true amount due thereon. It shall contain, in like cases, similar directions to the Sheriff or Constable as are required by the provisions of Title VII of this Act, in an execution to the Sheriff. [See Sec. 1273.]

How executed. 1621. SEC. 560. The Sheriff or Constable to whom the execution is directed shall proceed to execute the same in the same manner as the Sheriff is required by the provisions of Title VII of this Act to proceed upon executions directed to him; and the Constable, when the execution is directed to him, shall be vested, for that purpose, with all the powers of the Sheriff. Sections applicable. And sections two hundred and fourteen, ([a]) two hundred and fifteen, and from two hundred and seventeen to two hundred and thirty-six, both inclusive, and two hundred and thirty-eight and two hundred and thirty-nine of Chapter 1, said title, and Chapter 2 of the same title, are hereby made applicable to Justices' Courts and proceedings therein, the word "Justice" being inserted in lieu of the words "Judge" and "Clerk," whenever they occur; and a Constable to whom, and his successor in office, the writ is given, shall have all the powers and be subject to all the duties and liabilities therein given to or imposed upon the Sheriff; Provisos. *provided*, that the words "in an amount exceeding fifty dollars," in section two hundred and forty-three, shall be deemed omitted; *provided further*, that sales of real property shall be made at or upon the property sold.

(a) For Secs. 214 and 215, see Secs. 1275, 1276; for Secs. 217 to 236, inclusive, see Secs. 1278 to 1297, inclusive; for Secs. 238, 239, of Chapter 1, Title VII, see Secs. 1299, 1300; for Chapter 2 of same title, see Sec. 1301 et seq.

CHAPTER 5.—GENERAL PROVISIONS.

Provisions applicable to Justices' Courts. 1622. SEC. 561. Those provisions of this Act which are referred to in this title, and no other, shall, in addition to the provisions embraced in this title, be applicable to Justices' Courts and proceedings therein.

Docket, how kept. 1623. SEC. 562. Every Justice shall keep a book denominated a "Docket," in which he shall enter: First—The title of every action or proceeding. Second—The object of the action or proceeding; and if a sum of money be claimed, the amount of the demand. Third—The date of the summons and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts. Fourth—The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading, and of all motions made during the trial by either party, and his decisions thereon. Fifth — Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time. Sixth—The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury. Seventh—The names of the jury who appear and are sworn; the names of all witnesses sworn, and at whose request. Eighth—The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge. Ninth—The judgment of the Court, specifying the costs included, and the time when rendered. Tenth—The issuing of execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the Justice, and when and by whom. Eleventh—The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, and of the making and delivery of a transcript of his judgment or docket.

1624. SEC. 563. The several particulars of the last section specified shall be entered under the title of the action to which they relate, and at the time when they occur. Such entries in a Justice's docket, or a transcript thereof, certified by the Justice or his successor in office, shall be primary evidence to prove the facts so stated therein. Same. Entries to be evidence

1625. SEC. 564. A Justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family names. Index to.

1626. SEC. 565. It shall be the duty of every Justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to keep as public records. If the office of a Justice become vacant by his death or removal from the township, precinct, or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such Justice shall be deposited with the County Clerk of the county, to be by him delivered to the successor in office of the Justice. To be deposited with successor.

1627. SEC. 566. Any Justice with whom the docket of his predecessors is deposited, may issue execution or other process, upon a judgment there entered and unsatisfied in the same manner and with the same effect as the Justice by whom the judgment was entered might have done. In case of the creation of a new county or the change of the boundary between two counties, any Justice into whose hands the docket of a Justice formerly acting as such within the same territory may come, shall for the purposes of this section be considered the successor of said former Justice. Any Justice may issue execution.

1628. SEC. 567. The Justice elected or appointed to fill a vacancy shall be deemed the successor of the Justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take the office in the same township, precinct, or city from that time shall be deemed the successor. Who deemed successor.

1629. SEC. 568. When two or more Justices are equally entitled, under the last section, to be deemed the successors in office of a Justice, the Judge of a District Court for the county shall, by a certificate subscribed by him and filed in the office Same.

of the County Clerk, designate which Justice shall be the successor of a Justice going out of office, or whose office has become vacant.

Papers, how filled up

1630. SEC. 569. The summons, execution, and every other paper made or issued by a Justice, except a subpœna, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

Sickness of Justice, etc.

1631. SEC. 570. In case of the sickness, or other disability, or necessary absence of a Justice on a return day of a summons, or at the time appointed for a trial, another Justice of the same county or city may, at his request, attend in his behalf, and shall thereupon become vested with the power, for the time being, of the Justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending Justice, subscribed by him, shall be made in the docket of the Justice before whom the summons was returnable. If the case be adjourned, the Justice before whom the summons was returnable may resume jurisdiction.

Special deputation to serve papers.

1632. SEC. 571. The Justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order to arrest the defendant, or with or without a writ of attachment. The said Justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing on the process.

Authority of deputation.

1633. SEC. 572. The person deputed shall have the authority of a Constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

Constable to complete execution of process.

1634. SEC. 573. A Constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute in the same manner as if he still continued in office, and his sureties shall be liable to the same extent.

Contempt, what acts to constitute.

1635. SEC. 574. A Justice may punish as for contempt persons guilty of the following acts, and no other: First—Disorderly, contemptuous, or insolent behavior toward the Justice while holding the Court, tending to interrupt the due course of a trial or other judicial proceeding. Second—A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Justice or in the immediate vicinity of the Court held by him, tending to interrupt the due course of trial or other judicial proceedings. Third—Disobedience or resistance to the execution of a lawful order or process, made or issued by him. Fourth—Disobedience to a subpœna duly served, or refusing to be sworn or answer as a witness. Fifth—Rescuing any person or property in the custody of an officer by virtue of an order or process of the Court held by him.

When and how punished.

1636. SEC. 575. When a contempt is committed in the immediate view and presence of the Justice, it may be punished summarily, for which an order shall be made reciting the facts, as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Justice, a warrant of arrest may be issued by such Justice, on which the person so guilty may be arrested and brought before the Justice immediately, when an opportunity to be heard in his defense or excuse shall be given. The Justice may thereupon discharge him, or may convict him of the offense. A Justice may punish for contempts by fine or imprisonment, or both; such fine not to exceed in any case one hundred dollars, and such imprisonment one day.

Conviction, how entered.

1637. SEC. 576. The conviction, specifying particularly the offense and the judgment thereon, shall be entered by the Justice in his docket.

Subpœnas.

1638. SEC. 577. Justices of the Peace may issue subpœnas in any action or proceeding in the Courts held by them, and final process on any judgment recovered therein, to any part of the county. A Justice of the Peace may issue a summons to any person a resident of his township, precinct, or city, to appear before him at his office to act as interpreter in any action or proceeding in his Court. Such summons shall be served and returned in like manner as a subpœna issued by a Justice. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and may be punished accordingly.

Summons.

Commission to take depositions

1639. SEC. 578. Justices of the Peace may issue commissions to take the depositions of witnesses out of this State, and settle interrogatories to be annexed thereto, and direct the manner in which the commissions shall be returned. The provisions of Title XI of this Act, so far as the same are consistent with the jurisdiction and powers of Justices' Courts, shall be applicable to Justices' Courts and to actions and proceedings therein, the word "Justice" being deemed inserted in lieu of "Clerk" and "Judge," wherever the same occurs. ([a])

New trial, for what causes granted.

1640. SEC. 579. A new trial may be granted by the Justice, on motion, within ten days after the entry of judgment, for any of the following cases: First, accident or surprise, which ordinary prudence could not have guarded against; second, excessive damages, appearing to have been given under the influence of passion; or, third, insufficiency of the evidence to justify the verdict or other decision; fourth, newly discovered evidence material for the party making the application, which he could not with reasonable diligence have discovered and produced at the time.

Application.

1641. SEC. 580. The application shall be made upon affidavit and notice. The affidavit shall be filed with the Justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Appeal, how taken.

1642. SEC. 581. Any party dissatisfied with a judgment rendered in a Justice's Court, may appeal therefrom to the District Court for the county any time within thirty days after the rendering of judgment. The appeal shall be taken by filing

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(a) For Title XI see Sec. 1437, ante, et seq.

a notice with the Justice, and serving a copy on the adverse party.

Causes to be tried anew.

1643. SEC. 582. All causes appealed to the District Court shall be tried anew in said Court, and said Court may regulate by rule the practice in such cases in all respects not provided for by statute; *provided*, that the appellant shall in no case recover from respondent the cost incurred on appeal, unless he recover in the District Court a judgment more favorable to himself than the judgment appealed from; but shall, unless he recover in the District Court a judgment more favorable to himself than the judgment appealed from, pay the costs of respondent on appeal; and if such judgment be a money judgment in favor of appellant, and of sufficient amount to cover respondent's costs, such costs shall be deducted from said judgment; and in all other cases respondent shall have judgment against the appellant for the amount of his costs so incurred; *provided*, that whenever the Judge of the appellate Court shall be satisfied from the evidence that the appellant had reasonable grounds for his appeal, and that such appeal was taken in good faith, for the sole purpose of promoting the ends of justice, such Judge may then order such costs to be taxed against the respondent, or may apportion the costs between the parties in such manner as will be just. [As amended February 27, Stats. 1873, p. 101.]

Justice to transmit copy of docket, etc.

1644. SEC. 583. Upon receiving the notice of appeal, and on payment of the fees of the Justice, and filing an undertaking as required in the next section, the Justice shall, within five days, transmit to the Clerk of the District Court a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and undertaking filed; and the Justice may be compelled by the District Court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the Justice by the party or his attorney. In the District Court either party shall have the benefit of all legal objections made in the Justice's Court. (1)

(1) The mere recital in a transcript from a Justice's docket that defendant was duly served is not sufficient. Before the transcript can be admitted to establish the rights of one holding under the judgment of a Justice, the facts in regard to the service of summons must appear.—McDonald v. Prescott & Clark, 2 Nev., p. 109.

It may be proved in a collateral proceeding that certain property was not actually sold by a Constable at a judicial sale, notwithstanding the Constable's certificate of sale.—Id.

Appeal made effectual by filing undertaking, etc.

1645. SEC. 584. An appeal from a Justice's Court shall not be effectual for any purpose unless an undertaking be filed, within five days after filing the notice of appeal, with two or more sureties, in the sum of one hundred dollars, in gold coin of the United States, for the payment of the costs on the appeal, or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and shall be to the effect, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in said action in the District Court. When the action is for the recovery of specific personal property, the undertaking shall be to the effect that the appellant will pay the judgment and costs appealed from, and obey the order of the Court made therein, if the appeal be withdrawn or dismissed, or will pay the amount of any judgment and costs which may be recovered against him in said action in the District Court, and will obey any order made by the Court therein. The undertaking shall be accompanied by the affidavits of the sureties that they are residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties, within two days after the filing of the undertaking; and unless they and other sureties justify before the Justice from whose Court the appeal is taken, within two days thereafter, upon notice to the adverse party, the appeal shall be regarded as if no undertaking had been given. A deposit of the amount of judgment appealed from, including all costs, or of the value of the property, and all costs, in actions for the recovery of specific personal property, with the Justice, shall be equivalent to the filing of the undertaking in this section mentioned; and in such cases the Justice shall transmit the money to the Clerk of the District Court, to be by him paid out on the order of the Court; and all such undertakings shall be made payable in the currency in which the judgment appealed from is payable. **Adverse party may except.**

1646. SEC. 585. If an execution be issued on the filing of the undertaking, staying all proceedings, the Justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same. **Stay of proceedings.**

1647. SEC. 586. Costs and necessary disbursements in the action shall be allowed to the prevailing party in a Justice's Court. The party in whose favor a judgment is rendered, and who claims his costs, shall file with the Justice, within two days after the verdict or decision of the Court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which shall be verified as prescribed in section four hundred and eighty-six. (a) **Costs.**

(a) For Sec. 486, see Sec. 1547, ante.

Justices to receive money and pay over.

1648. SEC. 587. Justices of the Peace shall receive from the Sheriff or Constables of their county all moneys collected on any process or order issued by their Courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled or authorized to receive them, without delay. For a violation of this section they may be removed from their office, and shall be deemed guilty of a misdemeanor.

Deposit of money for costs.

1649. SEC. 588. Justices of the Peace may in all cases require a deposit of money, or an undertaking, as security for costs of Court, before issuing a summons.

Provisions applicable.

1650. SEC. 589. The provisions of Chapter 1, Title X, sections four hundred and ninety-five to five hundred and three, both inclusive, and five hundred and six to five hundred and eight, both inclusive, Title XV of this Act, and the miscellaneous provisions of Title XVIII, shall be applicable to Justices' Courts and actions therein, the word "Justice" being deemed inserted in lieu of the word "Clerk," wherever it occurs. (a)

(a) For Chap. 1, Title X, see Sec. 1414, et seq.; for Secs. 495 to 503, see Secs. 1556 to 1564, inclusive; for Secs. 506 to 508, see Secs. 1567 to 1569, inclusive.

TITLE XVIII. (b)

Miscellaneous provisions.

Rules of Court, how made.

1651. SEC. 590. The Supreme Court may make rules not inconsistent with the Constitution and laws of the State, for its own government and the government of the District Courts; but such rules shall not be in force until thirty days after their adoption and publication.

(b) Title XVIII made applicable to Justices' Courts by Sec. 1650.

Actions against Sheriffs, etc.

J. C.

1652. SEC. 591. If an action be brought against a Sheriff for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties, and the Court or Judge in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Terms explained.

J. C.

1653. SEC. 592. Words used in this Act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness; the words "real estate," or "real property," to include mining claims. Whenever the word Territory shall be used, it shall be held to include and apply to the District of Columbia.

Sureties required to make affidavit.

1654. SEC. 593. In all cases where an undertaking with sureties is required by the provisious of said Act, the Judge, Justice, or Clerk, or other officer taking the same, shall, unless it is otherwise provided in said Act, require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; *provided*, that when the amount specified in an undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. J. C.

Writs of certiorari, etc., by whom issued.

1655. SEC. 594. Writs of certiorari and mandamus may be issued in the cases prescribed by said Act, by a Judge of the Supreme Court or District Court in vacations, and may, in the discretion of the Judge issuing the writ, be made returnable, and a hearing may be had on the return thereof in vacation.

Sale of property under writ of attachment

1656. SEC. 595. Whenever property has been taken by an officer under a writ of attachment, in pursuance of the provisions of said Act, and it shall be made to appear satisfactorily to the Court, or a Judge thereof, that the interests of the parties to the action will be sustained by the sale thereof, the Court or Judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in Court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party, or his attorney, in case such party has been personally served with a summons in the action. J. C.

Certified copies of papers, etc., to be evidence.

1657. SEC. 596. A copy of any record, document, or paper in the custody of a public officer of this State, or of the United States, within this State, certified under the official seal, or verified by the oath of such officer to be a true, full, and correct copy of the original in his custody, may be read in evidence in any action or proceeding in the Courts of this State, in like manner and with the like effect as the original could be if produced. J. C.

Copartners, when summoned in common name.

1658. SEC. 597. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates, but the judgment in such case shall bind only the joint property of the associates. J. C.

Substitution of real party defendant.

1659. SEC. 598. A defendant against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract, or for the same property, upon due notice to such person, and the adverse party, apply to the Court for an order to substitute such person J. C.]

in his place, and discharge him from liability to either party, on his depositing in Court the amount claimed on the contract, or delivering the property, or its value, to such person as the Court may direct; and the Court may, in its discretion, make the order.

Intervention, when allowed.

J. C.

1660. SEC. 599. Any person shall be entitled to intervene in an action who has an interest in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

Who may intervene. J. C.

1661. SEC. 600. A third person may intervene either before or after issue has been joined in the cause.

How and what to set forth.

J. C.

1662. SEC. 601. The intervention shall be by petition or complaint filed in the Court in which the action is pending, and it must set forth the grounds on which the intervention rests. A copy of the petition or complaint shall be served upon the party or parties to the action against whom anything is demanded, who shall answer it as if it were an original complaint in the action.

Court to determine.

J. C.

1663. SEC. 602. The Court shall determine upon the intervention at the same time that the action is decided; if the claim of the party intervening is not sustained he shall pay all costs incurred by the intervention.

Action to obtain discovery not allowed J. C.

1664. SEC. 603. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding, shall be allowed.

Sureties may be examined under oath.

J. C.

1665. SEC. 604. In all cases not otherwise provided for in this Act, where sureties are required to justify, they shall appear before the officer or person authorized to take the justification, and may be examined under oath by such officer or person and the adverse party, touching their qualifications as sureties, which examination shall be reduced to writing and subscribed by the sureties if required. If, upon such examination, it shall appear to such officer or person that said sureties, or either of them, have the necessary qualifications of such, he shall so indorse upon the statement, and cause the same to be filed, and thereupon the justification shall be complete.

Act not to interfere with coin basis Act.

1666. SEC. 605. Nothing in this Act shall be construed to interfere with or affect any of the provisions of an Act entitled "An Act to establish the financial transactions of this State upon a coin basis," approved February second, eighteen hundred and sixty-nine; but the public debts therein mentioned shall be paid in the currency prescribed by said Act.

Acts repealed.

1667. SEC. 606. An Act of the Legislature of the late Territory of Nevada, entitled "An Act to regulate proceedings in civil cases in the Courts of justice of the Territory of Nevada," passed November twenty-ninth, eighteen hundred and sixty-one; and an Act of said Legislature entitled "An Act to amend an Act to regulate proceedings in the Courts of justice in this Territory," passed February twentieth, eighteen hundred and sixty-four; and all Acts and parts of Acts amendatory of or supplementary to said Act of November twenty-ninth, eighteen hundred and sixty-one, and "An Act to regulate the civil jurisdiction and practice in Justices' Courts, and to consolidate into one Act former provisions on the subject," approved February twenty-sixth, eighteen hundred and sixty-six, and all Acts and parts of Acts in conflict with this Act, are hereby repealed; but such repeal shall not invalidate any judgment rendered, or order made, or any proceedings already taken by virtue of said Acts or parts of Acts.

An Act to regulate appeals in the Courts of justice of this State.

[Approved March 11, 1865, p. 394.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

TITLE I.

Appeals to the Supreme Court.

Appeals, law and equity.

1668. SECTION 1. There shall be no distinction as to the mode of taking or perfecting appeals, or as to the effect of them, between cases at law and cases in equity.

Exceptions

1669. SEC. 2. In cases tried by the Court, without a jury, no judgment shall be reversed for want of a finding, or for a defective finding of the facts, unless exceptions be made in the Court below to the finding, or to the want of a finding; and in case of a defective finding, the particular defects shall be specifically and particularly designated; and upon failure of the Court below to remedy the alleged error, the party moving shall be entitled to his exceptions, and the same shall be settled by the Judge as in other cases; *provided*, that such exceptions to the finding, or want of a finding, shall be filed in the Court within five days after the making of the finding or decision to which exception is made.

Undertaking to be filed.

1670. SEC. 3. No appeal shall be dismissed for insufficiency of the notice of appeal, or undertaking thereon; *provided*, that a good and sufficient undertaking, approved by a Judge of the Supreme Court, be filed in the Supreme Court before the hearing upon motion to dismiss the appeal, and upon payment of such reasonable cost as the Court may adjudge; *provided*, that the respondent shall not be delayed, but may move, when the cause is regularly called, for the disposition of the same, if such undertaking be not given.

Bill of exceptions.

1671. SEC. 4. During the progress of a cause a party may take his bill of exceptions to the admission or exclusion of testimony, or to the rulings of the Judges on points of law, and it shall not be necessary to embody in such bill anything more than sufficient facts to show the point and pertinency of the exceptions taken. The presiding Judge shall sign the same as the truth of the case may be, and such bill shall then become a part of the record, and a party against whom judgment is rendered may appeal from such judgment without any further statement or motion; and on such appeal it shall only be necessary to bring to the Supreme Court the transcript of the pleadings, the judgment, and the bill or bills of exception so taken.

Absent or non-resident defendant.

1672. SEC. 5. When the defendant resides out of the State, or is absent therefrom, and has not appeared in the action, and no attorney has been appointed by the Court for such defendant, as provided in section thirty-one of an Act to regulate proceedings in civil cases in the Courts of justice in the Territory of Nevada, approved November twenty-ninth, eighteen hundred and sixty-one, notices and other papers, on motion for new trial and on appeal, may be served upon the Clerk of the Court for each defendant, or the Court may appoint an attorney for such defendant, to conduct the proceedings on his part upon such motion or appeal; and such notices and papers in that case may be served upon such attorney. (a)

(a) The balance of this Act relates to appeals from Justices' Courts, and is superseded by Civil Practice Act.

An Act relating to the manner of commencing civil actions.

[Approved December 20, 1862, p. 120.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Actions on contract.

1673. SECTION 1. In all actions hereafter brought on contract, the defendants may be sued by the name or style under which the contract was made, and upon its being shown on the trial who are the persons of whom the name or style are descriptive, judgment may be rendered against them as now provided by law. (1)

(1) When a company is sued, under the provisions of our Practice Act, by its firm name, and subsequently on trial it is proved who compose that company, judgment may go not only against the company property, but against individuals composing that company.—Gillig, Mott & Co. v. The Lake Bigler Road Co., 2 Nev., p. 214.

An Act concerning the determination of conflicting rights to mining claims in certain cases.

[Approved February 10, 1873, p. 50.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Actions to determine right of possession of mining claims.

1674. SECTION 1. In all actions brought to determine the right of possession of a mining claim, or metalliferous vein or lode, where an application has been made to the proper officers of the Government of the United States by either of the par-

Jurisdiction.

ties to such action for a patent for said mining claim, vein, or lode, it shall only be necessary to confer jurisdiction on the Court to try said action, and render a proper judgment therein, that it appear that an application for a patent for such mining claim, vein, or lode has been made, and that the parties to said action are claiming such mining claim, vein, or lode, or some part thereof, or the right of possession thereof.

CHAPTER LIII.

OF PROCEEDINGS IN CRIMINAL CASES.

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AMENDATORY ACT.

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An Act to regulate proceedings in criminal cases in the Courts of justice in the Territory of Nevada.

[Approved November 26, 1861, p. 435.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

I.—GENERAL DEFINITIONS AND PROVISIONS.

1675. SECTION 1. A crime or public offense is an act or omission forbidden by law, and to which is annexed, on conviction: First — Death. Second — Imprisonment. Third—Fine. Fourth—Removal from office. Fifth—Disqualification to hold or enjoy any office of honor, trust, or profit under this Territory. Crimes defined.

1676. SEC. 2. Public offenses are divided into: First—Felonies. Second—Misdemeanors. Public offenses, how divided.

1677. SEC. 3. A felony is a public offense punishable with death, or by imprisonment in the Territorial Prison. Felony.

1678. SEC. 4. Every other public offense is a misdemeanor. Misdemeanor.

1679. SEC. 5. No person can be punished for a public offense except upon legal conviction in a Court having jurisdiction. No punishment except on conviction.

1680. SEC. 6. Every public offense must be prosecuted by indictment, except: First—Where proceedings are had for the removal of a civil officer of the Territory. Second—Offenses arising in the militia when in actual service in time of war, or which this Territory may keep, with the consent of Congress, in time of peace. Third—Offenses tried in Justices' Courts. Prosecution by indictment. Exceptions

1681. SEC. 7. The proceedings by which a party charged with a public offense is accused and brought to trial and punishment, shall be known as a criminal action. Criminal action, what.

1682. SEC. 8. A criminal action shall be prosecuted in the name of the people of the United States in the Territory of Nevada, as a party against the party charged with the offense. How prosecuted.

1683. SEC. 9. The party prosecuted in a criminal action is designated in this Act as the defendant. Designation of party.

1684. SEC. 10. In a criminal action the defendant is entitled: First, to a speedy and public trial; second, to be allowed counsel, as in civil actions; or he may appear and defend in person or with counsel; and, third, to produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the Court; except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down in writing, and subscribed by the witness in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally, in the like manner, in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness, the deposition of such Rights of defendant.

witness may be read upon its being satisfactorily shown to the Court that he is dead or insane, or cannot, with due diligence, be found within the Territory.

Second prosecution for same offense. 1685. SEC. 11. No person shall be subject to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted.

Self-crimination. 1686. SEC. 12. No person shall be compelled, in a criminal action, to be a witness against himself, nor shall a person Unnecessary restraint. charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

Mode of conviction. 1687. SEC. 13. No person can be convicted of a public offense, tried by indictment, unless by the verdict of a jury, accepted and recorded by the Court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment in the case, mentioned in section two hundred and ninety-three.

II.—PREVENTION OF PUBLIC OFFENSES. (a)

Resistance to commission of crime may be made. 1688. SEC. 14. Lawful resistance to the commission of a public offense may be made: First—By the party about to be injured. Second—By other parties.

(a) Officer or private person justifiable in killing.—Stats. 1866, p. 247. (See Sec. 2679, post.)

Resistance by party about to be injured. 1689. SEC. 15. Resistance sufficient to prevent the offense may be made by the party about to be injured: First—To prevent an offense against his person, or his family, or some member thereof. Second—To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

Other persons may aid. 1690. SEC. 16. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

Intervention of public officers. 1691. SEC. 17. Public offenses may be prevented by the intervention of the officers of justice: First—By requiring surety to keep the peace. Second—By forming a police in cities and towns, and by requiring their attendance in exposed places. Third—By suppressing riots.

By other persons, in aid. 1692. SEC. 18. Whenever the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command act in their aid, are justified in so doing.

Complaint for threatening offenses. 1693. SEC. 19. A complaint may be laid before any of the magistrates mentioned in section one hundred and two, that a person has threatened to commit an offense against the person or property of another.

Examination of complainant. 1694. SEC. 20. When the complaint is laid before the magistrate, he shall examine, on oath, the complainant and any witness he may produce, and shall take their depositions in writing, and cause them to be subscribed by the parties making them.

Magistrate to issue warrant. How same to be directed. 1695. SEC. 21. If it appears from the deposition that there is just reason to fear the commission of the offense threatened by the person so complained of, the magistrate shall issue a warrant directed generally to the Sheriff of the county, or any

Constable, Marshal, or policeman in the Territory, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

1696. SEC. 22. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

Hearing evidence. It must be reduced to writing.

1697. SEC. 23. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged.

Complaint dismissed, when.

1698. SEC. 24. If, however, there be just reason to fear the commission of the offense, the person complained of may be required to enter into a bond, in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of this Territory, and particularly towards the complainant. The bond shall be valid and binding for six months, and may, upon the renewal of the complaint, be extended for a longer period, or a new bond may be required.

Surety to keep the peace.

Amount of bond.

1699. SEC. 25. If the bond required by the last section be given, the party complained of shall be discharged. If he do not give it, the magistrate shall commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Commitment on failure to give bond.

1700. SEC. 26. If the person complained of be committed for not giving the bond required, he may be discharged by any magistrate upon giving the same.

Discharged on giving same.

1701. SEC. 27. A bond given, as provided in section twenty-four, must be filed by the magistrate in the office of the Clerk of the county.

Bond to be filed, where.

1702. SEC. 28. Any person who, in the presence of a Court or magistrate, shall assault, or threaten to assault another, or to commit any offense against his person or property, or who shall contend with another with angry words, may be ordered by the Court or magistrate to give security, as is provided in section twenty-four, or, if he refuse to do so, may be committed, as provided in section twenty-five.

Breach of the peace in presence of Court or magistrate.

1703. SEC. 29. A bond to keep the peace shall be deemed broken on a conviction of the person complained against of a breach of the peace.

Bond to keep the peace, when forfeited.

1704. SEC. 30. Upon the District Attorney's producing evidence of such conviction to the District Court of the United States, in the Territory of Nevada, the Court shall order the bond to be prosecuted, and the District Attorney shall thereupon commence an action on the same, in the name of the people of this Territory.

Bond, when and where to be prosecuted.

1705. SEC. 31. In the action, the offense stated in the record of conviction shall be alleged as the breach of the bond, and shall be conclusive evidence thereof.

Evidence of a breach of bond.

1706. SEC. 32. No security to keep the peace, or be of good behavior, shall be required except as herein prescribed.

No other security required.

1707. SEC. 33. The organization and regulation of the police force, in the cities and towns of this Territory, are governed by special laws.

Police force

[Secs. 34 to 48, both inclusive, are superseded by Act of March 9, Stats. 1866, p. 247; see Secs. 2680 to 2694, post, inclusive.]

Resisting authorities after proclamation issued.

1708. SEC. 49. Any person who shall, after the publication of the proclamation authorized by section forty-seven, resist or aid in resisting the execution of process in any county so declared to be in a state of insurrection, or who shall aid or attempt the rescue or escape of any person from lawful custody or confinement, or who shall resist or aid in resisting any force ordered out by the Governor to quell or suppress an insurrection, shall be punished by imprisonment, in a Territorial prison, for a term not less than two years.

III.—PROCEEDINGS FOR REMOVAL OF PUBLIC OFFICERS.

[Secs. 50 to 65, inclusive, superseded by Act of March 12, 1873, p. 210, Sec. 2576, et seq.; also see Article VII, of the Constitution of Nevada.]

Officer suspended when impeached.

1709. SEC. 66. Whenever articles of impeachment against any officer subject to impeachment, shall be presented to the President of the Council, such officer shall be temporarily suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any Territorial officer, created by Territorial law, the Governor shall immediately take charge of his office, and such office shall at once be temporarily filled by appointment by the Governor, by and with the advice and consent of the Council, until the acquittal of the party impeached; or, in case of his removal, then until the vacancy be filled as provided by law.

Indictment not barred by impeachment.

1710. SEC. 67. If the offense for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

[Secs. 68 to 81, inclusive, are superseded by "An Act relating to elections," of March 12, Stats. 1873, p. 209; see Secs. 2566 to 2575, inclusive.]

IV.—PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

1.—*Local jurisdiction of public offenses.*

Who amenable to the laws.

1711. SEC. 82. Every person, whether an inhabitant of this Territory, or any other State or country, or of a Territory or District of the United States, shall be liable to punishment by the laws of this Territory for a public offense committed by him therein, except where it is by law cognizable exclusively in the Courts of the United States.

Offenses commenced out of the State and consummated within it.

1712. SEC. 83. When the commission of a public offense commenced without the Territory, is consummated within the boundaries thereof, the defendant shall be liable to punishment therefor in this Territory, though he were without the Territory at the time of the commission of the offense charged; *provided*, he consummated the offense through the intervention of an innocent or guilty agent without this Territory, or any other means proceeding directly from himself, and in such case the jurisdiction shall be in the county in which the offense is consummated.

1713. SEC. 84. When an inhabitant or resident of this Territory shall, by any previous appointment or engagement, fight a duel without the jurisdiction of this Territory, and in such duel a wound shall be inflicted upon any person whereof he shall die within this Territory, the jurisdiction of the offense shall be in the county where the death shall happen. **Death by dueling, out of Territory.**

1714. SEC. 85. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction shall be in either county. **Offenses committed partly in two counties.**

1715. SEC. 86. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction shall be within either county. **Committed on or near county boundary.**

1716. SEC. 87. When an offense is committed within this Territory, on board a vessel navigating a river, bay, slough, or lake, or lying therein in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate. **On vessels.**

1717. SEC. 88. The jurisdiction of an indictment for the crime of forcibly stealing, taking, or arresting any man, woman, or child in this Territory and carrying him or her into another county, State, or Territory; or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this Territory, without having established a claim according to the laws of the United States; or for hiring, persuading, enticing, decoying, or seducing by false promises, misrepresentations, and the like, any negro, mulatto, Indian, or colored person to go out of this Territory, or to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, colored person, or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, Indian, or colored person, shall be, in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act shall be done by the offender in instigating, procuring, promoting, aiding in, or being accessory to the commission of the offense, or in abetting the parties therein concerned **Kidnapping, where cognizable**

1718. SEC. 89. When the offense of bigamy or incest is committed in one county, and the defendant is apprehended in another, the jurisdiction shall be in either county. **Bigamy or incest, where cognizable.**

1718†. SEC. 90. When property feloniously taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense shall be in either county. But if, at any time before the conviction of the defendant in the latter, he be indicted in the former county, the Sheriff of the latter county shall, upon demand, deliver him to the Sheriff of the former county, upon being served with a copy of the indictment, and upon receipt, **Property stolen in one and taken into another county, where triable.**

indorsed thereon by the Sheriff of the former county, of the body of the offender, and shall, on filing the copy of the indictment and receipt, be exonerated from all liability in respect to the custody of the offender.

Accessory, where triable. 1719. SEC. 91. In the case of an accessory before or after the fact in the commission of a public offense, the jurisdiction shall be in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county. (1)

(1) VENUE IN TRIAL OF ACCESSORY.—There seems to be an incongruity between Sec. 91 of the Criminal Practice Act, which requires an accessory before the fact to be tried where his offense is committed, and Sec. 252, which places him on the same plane with the principal; but the former clearly does not apply in a case where the acts of the accessory are done out of the State.—State v. Chapman, 6 Nev., p. 320.

Trial in another State, etc., to bar indictment in certain cases. 1720. SEC. 92. When an act charged as a public offense is within the jurisdiction of another State or Territory, as well as of this Territory, a conviction or acquittal thereof in such Territory or State shall be a bar to a prosecution or indictment therefor in this Territory.

Trial in one county a bar in another. 1721. SEC. 93. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county shall be a bar to a prosecution or indictment therefor in another.

2.—*Time of commencing criminal actions.*

For murder, no limit. 1722. SEC. 94. There shall be no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Other felony, three years 1723. SEC. 95. An indictment for any other felony than murder must be found within three years after its commission.

Misdemeanor, one year. 1724. SEC. 96. An indictment for any misdemeanor must be found within one year after its commission.

Time of absence of defendant not to be included. 1725. SEC. 97. If, when the offense is committed, the defendant be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory, and no time during which the defendant is not an inhabitant of, or usually resident within, the Territory, shall be a part of the limitation.

Indictment, when deemed found. 1726. SEC. 98. An indictment is found within the meaning of this title, when it is duly presented by the grand jury in open Court, and there received and filed.

Same. 1727. SEC. 99. In offenses committed before the passage of this Act, indictments may be found at any time within the limitation hereinabove provided, and the time of limitation shall commence after the passage of this Act.

3.—*Complaint, and proceedings thereon to the commitment, inclusive.*

Complaint. 1728. SEC. 100. The complaint is the allegation made to a magistrate that a person has been guilty of some public offense.

Magistrates.

1729. SEC. 101. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

Who are magistrates

1730. SEC. 102. The following persons are magistrates:

First—The Justices of the Supreme Court.

Second—The Judges of the District Courts.

Third—The Justices of the Peace; and,

Fourth—Police Judges and others, upon whom are conferred by law the powers of a Justice of the Peace in criminal cases. [As amended March 13, Stats. 1867, p. 124.]

Examination of complainant.

1731. SEC. 103. When a complaint is laid before a magistrate of the commission of a public offense triable within the county, he must examine on oath the complainant or prosecutor, and any witness he may produce, and may require their depositions to be reduced to writing and subscribed by the parties making them if the magistrate deem it advisable; *provided*, if a complaint by proper affidavit, setting forth the nature of the charge, and the facts within the knowledge, information, or belief of the party making the same, be filed with the magistrate, and it sufficiently appears that an offense has been committed by some person known or unknown to the affiant, triable within the county, the Justice may issue a warrant of arrest. [As amended March 13, Stats. 1867, p. 125.]

Deposition, what to set forth.

1732. SEC. 104. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense, and the guilt of the defendant.

Warrant, when to issue.

1733. SEC. 105. If the magistrate be satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

Warrant, form of.

1734. SEC. 106. A warrant of arrest is an order in writing in the name of the people of the United States and Territory of Nevada, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

"COUNTY OF ——.

"The People of the United States and Territory of Nevada, to any Sheriff, Constable, Marshal, or policeman in this Territory, or in the County of ——: A complaint, upon oath, has been this day laid before me, by A. B., that the crime of [designate it] has been committed, and accusing C. D. thereof; you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at [naming the place], or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

"Dated at ——, this —— day of ——, 18—."

Name of defendant. Date of warrant. Warrant to be signed.

1735. SEC. 107. The warrant must specify the name of the defendant; if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate with his name of office.

How executed.

1736. SEC. 108. The warrant must be directed to, and executed by, a peace officer.

Peace officers, who are.

1737. SEC. 109. Peace officers are Sheriffs of counties, and Constables, Marshals, and policemen of cities and towns respectively.

Warrant, to whom directed.

1738. SEC. 110. If a warrant be issued by a Justice of the Supreme Court, or Probate Judge, it may be directed generally to any Sheriff, Constable, Marshal, or policeman in this Territory, and may be executed by any of those officers to whom it may be delivered.

Warrant to be indorsed out of county.

1739. SEC. 111. If it be issued by any other magistrate, it may be directed generally to any Sheriff, Constable, Marshal, or policeman in the county in which it is issued, and may be executed in that county; or, if the defendant be in another county, it may be executed therein upon the written direction of a magistrate of that county indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: This warrant may be executed in the County of ——, or as the case may be.

Proceedings on arrest for felony.

1740. SEC. 112. If the offense charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section one hundred and sixteen.

Same, for misdemeanor.

1741. SEC. 113. If the offense charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being so required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

Bail to be certified on warrant.

1742. SEC. 114. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall, without delay, deliver the warrant and recognizance to the Clerk of the Court at which the defendant is required to appear.

Defendant, when to be taken before magistrate.

1743. SEC. 115. If, on the admission of the defendant to bail, as provided in section one hundred and thirteen, or if bail be not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided by the next section.

When magistrate absent or unable to act.

1744. SEC. 116. When, by the preceding sections of this Act, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer shall, at the same time, deliver to the magistrate the warrant, with his return, indorsed and subscribed by him.

No unnecessary delay.

1745. SEC. 117. The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

Proceedings, when taken before another magistrate.

1746. SEC. 118. If the defendant be brought before a magistrate in the same county, other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to such magistrate; or, if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew.

1747. SEC. 119. When a complaint is laid before a magistrate, of the commission of a public offense, triable within some other county of this Territory, but showing that the defendant is in the county where the complaint is laid, the same proceedings shall be had as prescribed in this Act, except that the warrant shall require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the complainant or prosecutor, and of the witnesses who may have been produced, shall be delivered by the magistrate to the officer to whom the warrant is delivered. Proceedings, when offense triable in another county.

1748. SEC. 120. The officer who executes the warrant shall take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and shall deliver to such magistrate the depositions and the warrant, with his return indorsed thereon, and such magistrate shall proceed in the same manner as upon a warrant issued by himself. Duty of officer.

1749. SEC. 121. If the offense charged in the warrant issued pursuant to section one hundred and nineteen, be a misdemeanor, the officer shall, upon being so required by the defendant, take him before a magistrate of the county in which the said warrant is issued, who shall admit the defendant to bail, and immediately transmit the warrant, depositions, and recognizance, to the Clerk of the Court in which the defendant is required to appear. Same.

1750. SEC. 122. Arrest is the taking of a person into custody that he may be held to answer for a public offense. Arrest.

1751. SEC. 123. An arrest may be either: First, by a peace officer, under a warrant; second, by a peace officer, without a warrant; or, third, by a private person. By whom to be made.

1752. SEC. 124. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution. Who required to aid in.

1753. SEC. 125. If the offense charged be a felony, the arrest may be made on any day, and at any time of the day or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate, indorsed upon the warrant. At what time to be made.

1754. SEC. 126. An arrest shall be made by an actual restraint of the person of the defendant, or by his submission to the custody of the officers. How made.

1755. SEC. 127. The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention. Necessary restraint only.

1756. SEC. 128. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant, if required. Officer to state authority, etc.

1757. SEC. 129. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest. Defendant resisting.

1758. SEC. 130. The officer may break open any outer or inner door, or window, of a dwelling house, to execute the Power of officers.

warrant, if, after notice of his authority and purpose, he be refused admittance.

Same. 1759. SEC. 131. An officer may break open any outer or inner door, or window, of a dwelling house, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

Arrest, without warrant. 1760. SEC. 132. A peace officer may, without a warrant, arrest a person: First—For a public offense, committed, or attempted, in his presence. Second—Where the person arrested has committed a felony, although not in his presence. Third—Where a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. Fourth—On a charge made upon a reasonable cause of the commission of a felony by the party arrested.

May break open doors, etc. 1761. SEC. 133. To make an arrest, as provided in the last section, the officer may break open any outer or inner door, or window, of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

Arrest at night. 1762. SEC. 134. He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that a felony had not been committed.

Officer to state authority. 1763. SEC. 135. When arresting a person without a warrant, the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of a public offense, or when he is pursued immediately after an escape.

Arrest by bystander. 1764. SEC. 136. He may take before a magistrate any person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

Offense in presence of magistrate. Order to arrest. 1765. SEC. 137. When a public offense is committed in the presence of a magistrate, he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Private person may arrest, when. 1766. SEC. 138. A private person may arrest another: First—For a public offense committed, or attempted, in his presence. Second—When the person arrested has committed a felony, although not in his presence. Third—When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

To state cause of arrest. 1767. SEC. 139. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit, immediately after its commission.

May break open doors, etc. 1768. SEC. 140. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open any outer or inner door or window of a dwelling house, for the purpose of making the arrest.

Duty after making arrest. 1769. SEC. 141. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

1770. SEC. 142. If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the Territory. **Escape and recapture.**

1771. SEC. 143. To retake the person escaping or rescued, the person pursuing may, after notice of his intention, and refusal of admittance, break open any outer or inner door or window of a dwelling house. **May break open door, etc.**

1772. SEC. 144. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate shall immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had. **Proceeding after arrest.**

1773. SEC. 145. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose, and shall, upon the request of the defendant, require a peace officer to take a message to such counsel, within the township or city, as the defendant may name. The officers shall, without delay and without fee, perform that duty. **Time to procure counsel.**

1774. SEC. 146. The magistrate shall, immediately after the appearance of counsel, or if defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case. **Examination.**

1775. SEC. 147. The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant. **Completion of, at one session. Adjournment of; how long.**

1776. SEC. 148. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money, as provided in this Act, as security for his appearance at the time to which the examination is adjourned. **Defendant committed, or admitted to bail.**

1777. SEC. 149. The commitment for examination shall be by an indorsement signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B., having been brought before me under this warrant, is committed for examination to the Sheriff of the County of ——." If the Sheriff be not present, the defendant may be committed to the custody of a peace officer. **Form of commitment for examination.**

1778. SEC. 150. At the examination the magistrate shall, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information. He shall issue subpœnas for any witness required by the prosecutor or the defendant, as provided in section five hundred and thirty six. **Depositions to be read. Subpœnas.**

1779. SEC. 151. The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf. If either party so desire, the examination shall be by interrogatories, direct and cross; *provided,* by consent of parties, the testimony may be reduced to writing in narrative form. The testimony so taken may be used by either party on the **Witnesses examined, how.**

Either party may use testimony on trial. trial of the cause, and in all proceedings therein, when the witness is sick, out of the State, dead, or when his personal attendance cannot be had in Court. When the testimony of each witness is all taken, the same shall be read over to the witness and corrected as may be desired, and then subscribed by the witness; or, if he refuses to sign it, the fact of such refusal, and any reasons assigned therefor, must be stated, and the same shall be tested by the magistrate. And such testimony, so reduced to writing and authenticated according to the provisions of this section, shall be filed by the examining magistrate with the Clerk of the District Court of his county, and in case such prisoner be subsequently examined upon a writ of habeas corpus such testimony shall be considered as given before such Judge or Court. [As amended March 13, Stats. 1867, p. 125.] Testimony to be filed with District Clerk.

Right of defendant to make statement. 1780. SEC. 152. When the examination of witnesses on the part of the people is closed, the magistrate shall distinctly inform the defendant that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he see fit, to answer the charge, and to explain the facts alleged against him; that he is at liberty to waive making a statement; and that his waiver cannot be used against him on the trial. ([a])

(a) Defendant may testify.—Laws 1867, p. 58. (See Sec. 2305, post.)

Waiver of such right. 1781. SEC. 153. If the defendant waive his right to make a statement, the magistrate shall make a note thereof immediately following the deposition of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial.

Statement taken in writing. 1782. SEC. 154. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing, without oath, and shall put to the defendant the following questions only: "What is your name and age? Where were you born? Where do you reside, and how long have you resided there? What is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation." Questions.

Answers read to defendant. Corrections 1783. SEC. 155. The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected until it is made conformable to what he declares to be the truth.

Statement, authentication of. 1784. SEC. 156. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form: First—It must set forth in detail that the defendant was informed of his rights as provided by section one hundred and fifty-two, and that after being so informed he made the statement. Second—It must contain the questions put to him, and his answers thereto, as provided in sections one hundred and fifty-four and one hundred and fifty-five. Third—It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated as he gives it. Fourth—It must be signed and certified by the magistrate.

Defendant's witnesses, examination of.

1785. SEC. 157. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined.

Examination of defendant. Witnesses to be excluded. Witnesses may be kept separate.

1786. SEC. 158. The witnesses produced on the part either of the people or of the defendant shall not be present at the examination of the defendant; and while a witness is under examination the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Examination with closed doors, when.

1787. SEC. 159. The magistrate shall, also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the Attorney General, the District Attorney of the county, the defendant and his counsel, and the officer having the defendant in custody. (1)

Defendant to be discharged, when.

1788. SEC. 160. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offense has not been committed, or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged, by an indorsement on the depositions and statement signed by him to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

Form of discharge.

Order to hold to answer.

1789. SEC. 161. If, however, it appear from the examination, that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall, in like manner, indorse on the depositions and statement, an order signed by him to the following effect: "It appearing to me by the within depositions and statement (if any), that the offense therein mentioned (or any other offense according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

Form of.

Form of order, when not bailable.

1790. SEC. 162. If the offense be not bailable, the following words, or words to the same effect, shall be added to the indorsement: "And that he be committed to the Sheriff of the County of ——."

Form, when bailable.

1791. SEC. 163. If the offense be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, shall be added to the indorsement: "And I have admitted him to bail to answer by the recognizance hereto annexed."

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(1) When an order is made excluding defendant's witness from the Court-room, so that neither witness shall hear the others testify, and some of the witnesses come in during the trial, this may discredit such witnesses, and subject them to punishment for contempt. But the defendant himself not being in fault, is entitled to their testimony.—State v. Salge, 2 Nev., p. 321.

Form, when bailable, but bail not given. 1792. SEC. 164. If the offense be bailable, and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the indorsement mentioned in section one hundred and sixty-one: "And that he be admitted to bail, in the sum of —— dollars, and be committed to the Sheriff of the County of ——, until he gives such bail."

Commitment. 1793. SEC. 165. If the magistrate order the defendant to be committed, as provided in sections one hundred and sixty-two and one hundred and sixty-four, he shall make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the commitment.

Form of. 1794. SEC. 166. The commitment must be to the following effect: "County of —— (as the case may be). The people of the United States and Territory of Nevada to the Sheriff of the County of ——: An order having been this day made by me, that A. B. be held to answer upon a charge of [stating briefly the nature of the offense, and, as near as may be, the time when and place where the same was committed]; you are commanded to receive him into your custody, and detain him until he be legally discharged. Dated this —— day of ——, 18—."

Witnesses to enter into recognizance. 1795. SEC. 167. On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him a written recognizance, to the effect that he will appear and testify at the Court to which the depositions and statements are to be sent, or that he will forfeit the sum which may be ordered by the Court. [As amended March 13, Stats. 1867, p. 125.]

Recognizance with sureties. 1796. SEC. 168. Whenever the magistrate shall be satisfied by proof, on oath, that there is reason to believe that any such witness will not fulfill his recognizance to appear and testify, unless security be required, he may order the witness to enter into a written recognizance, with such sureties and in such sum as he may deem meet for his appearance, as specified in the last section.

Infants and married women to procure sureties. 1797. SEC. 169. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

Failing to enter into recognizance, to be committed. 1798. SEC. 170. If a witness required to enter into recognizance to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged.

Conditional examination of witness unable to give security. 1799. SEC. 171. When, however, it shall satisfactorily appear by the examination on oath of the witness, or any other person, that the witness is unable to procure sureties, or if either the State or the defendant shall demand that the deposition of the witness be then taken, he or she may be forthwith conditionally examined on behalf of the party requiring the deposition to be taken; such examination shall be by question and answer, and shall be reduced to writing by the magistrate, or under his direction, in the presence of the defendant and the counsel for the State. When the examination is completed the deposition shall be carefully read over to the witness, and corrected in any particular desired, signed by the witness, certified by the magistrate, and transmitted to the Clerk of the District Court of the proper county. The witness thereupon shall be discharged; *provided*, when both parties consent thereto, the deposition may be taken in narrative form. [As amended March 13, Stats. 1867, p. 125.]

Not to apply to prosecutor, or to an accomplice.

1800. SEC. 172. The last section shall not apply to the prosecutor, or to an accomplice in the commission of the offense charged.

Magistrate to make return to Court.

1801. SEC. 173. When a magistrate has discharged a defendant, or has held him to answer, as provided in sections one hundred and sixty-one and one hundred and sixty-two, he shall return without delay to the Clerk of the Court, at which the defendant is required to appear, the warrant, if any, the depositions, the statement of defendant, if he have made one, and all recognizance of bail or for the appearance of witnesses taken by him.

4.—*Proceedings after commitment, and before indictment.*

Prosecution by indictment.

1802. SEC. 174. All public offenses prosecuted in the District Court must be prosecuted by indictment, except as provided in the next section.

By accusation.

1803. SEC. 175. Where the proceedings are had for the removal of district, county, or township officers, they may be commenced by an accusation in writing, as provided in sections sixty-eight and eighty-one.

Where found.

1804. SEC. 176. All accusations against district, county, and township officers, and all indictments, must be found in the District Court.

Grand jury, formation of.

1805. SEC. 177. The formation of grand juries is prescribed by special statutes.

Challenge to.

1806. SEC. 178. A challenge may be taken to the panel of the grand jury, or to any individual grand juror, in the cases hereinafter prescribed, by the people or by the defendant.

To the panel.

1807. SEC. 179. A challenge to the panel may be interposed for one or more of the following causes: First—That the requisite number of ballots was not drawn from the jury box of the county as prescribed by law. Second—The notice of the drawing of the grand jury was not given as prescribed by law. Third—That the drawing was not had in the presence of the officers or officer designated by law.

To individual juror.

1808. SEC. 180. A challenge to an individual grand juror may be interposed for one or more of the following causes, and for no other: First—That he is a minor. Second—That he is an alien. Third—That he is insane. Fourth—That he is the prosecutor, upon a charge or charges, against the defendant. (1) [As amended January 22, Stats. 1866, p. 49.]

(1) A prosecutor is "one who prefers an accusation against a party whom he suspects to be guilty." A party who appears in response to a subpœna is not a prosecutor, but only a witness.—State vs. Millain, 3 Nev., p. 409.

How made and tried. 1809. SEC. 181. The challenges mentioned in the last three sections may be oral, and shall be entered upon the minutes, and tried by the Court in the same manner as challenges in the case of a trial jury which are triable by the Court.

Decision on, enter in minutes. 1810. SEC. 182. The Court shall allow or disallow the challenge, and the Clerk shall enter its decisions in the minutes.

Effect of challenge to panel. 1811. SEC. 183. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If they should, notwithstanding, do so, and find an indictment against him, the Court shall direct the indictment to be set aside.

Of challenge to the polls. 1812. SEC. 184. If a challenge to an individual grand juror be allowed, he shall not be present at, or take part in, the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

Contempt for violation of last section. 1813. SEC. 185. The grand jury shall inform the Court of a violation of the last section, and it shall be punished by the Court as a contempt.

Objections only by challenge. 1814. SEC. 186. A person held to answer to a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror, in no other mode than by challenge, as prescribed in the preceding section.

Foreman of grand jury. 1815. SEC. 187. From the persons summoned to serve as grand jurors, and appearing, the Court shall appoint a foreman. The Court shall also appoint a foreman when the person already appointed is discharged or excused before the grand jury is dismissed.

Oath of foreman. 1816. SEC. 188. The following oath shall be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire into, and true presentment make, of all public offenses against the people of the United States in the Territory of Nevada, committed or triable within the jurisdiction of this Court, of which you shall have or can obtain legal evidence. You shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Oath of balance of jurors. 1817. SEC. 189. The following oath shall be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you, and each of you, shall well and truly observe on your part, so help you God."

1818. SEC. 190. The grand jury being impaneled and sworn, shall be charged by the Court. In doing so, the Court shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the Court, or likely to come before the grand jury. The Court need not, however, charge them respecting violations of any particular statute. Charge to grand jury.

1819. SEC. 191. The grand jury shall then withdraw to a private room, and inquire into the offenses cognizable by them. Sittings.

1820. SEC. 192. The grand jury, on the completion of the business before them, shall be discharged by the Court, but whether the business be completed or not, they shall be discharged by the final adjournment of the Court. Discharge of, when and how.

1821. SEC. 193. If an offense be committed during the sitting of the Court, after the discharge of the grand jury, the Court may, in its discretion, direct an order to be entered that the Sheriff summon another grand jury. Another grand jury, when.

1822. SEC. 194. An order shall thereupon be made out by the Clerk, and directed to the Sheriff, requiring him to summon twenty-four persons, qualified to serve as grand jurors, to appear forthwith, or at such time as may be named by the Court. Order for.

1823. SEC. 195. The Sheriff shall execute the order, and return it with a list of the names of the persons summoned. Duty of officer.

1824. SEC. 196. At the time appointed the list shall be called over, and the names of those in attendance be written by the Clerk on separate ballots, and put into a box, from which a grand jury shall be drawn. How drawn

SEC. 197. [a]

[a] Secs. 197 to 201, both inclusive, related to the selection and formation of trial and grand juries; are superseded by Act of March 5, Stats. 1873, p. 126. See Sec. 1051 et seq., ante. Sections superseded.

1826. SEC. 202. The grand jury has the power, and it is their duty, to inquire into all public offenses committed or triable within the jurisdiction of this Court, and to present them to the Court, either by presentment or indictment. Grand jury, powers and duties.

1827. SEC. 203. An indictment is an accusation in writing, presented by the grand jury to a competent Court, charging a person with a public offense. Indictment, what.

1828. SEC. 204. A presentment is an informal statement in writing, by the grand jury, representing to the Court that a public offense has been committed, which is triable within the district, and that there is reasonable ground for believing that a particular individual, named or described, has committed it. Presentment, what.

1829. SEC. 205. The foreman may administer an oath to any witness appearing before the grand jury. Foreman administer oaths.

1830. SEC. 206. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury shall receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of witnesses taken as provided in this Act. Evidence to be received.

Same. 1831. SEC. 207. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Evidence for defendant. 1832. SEC. 208. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the District Attorney to issue process for the witnesses.

Indictment, when to be found. 1833. SEC. 209. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Information by member of. 1834. SEC. 210. If a member of the grand jury know, or have reason to believe, that a public offense has been committed, which is triable within the jurisdiction of this Court, he must declare the same to his fellow jurors, who shall thereupon investigate the same.

Inquiries to be made. 1835. SEC. 211. The grand jury must inquire into the case of every person imprisoned in the jail of the county, on a criminal charge, and not indicted; into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county.

Free access to jails and prisons. 1836. SEC. 212. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the district.

Ask advice of Court. 1837. SEC. 213. The grand jury may, at all reasonable times, ask the advice of the Court, or any member thereof, and of the District Attorney. Unless his advice be asked, no member of the Court shall be permitted to be present during the session of the grand jury. The District Attorney shall be allowed, at all times, to appear before the grand jury on his request, for the purpose of giving information or advice relative to any matter cognizable by them; and may interrogate witnesses before them, when they shall deem it necessary. Except the District Attorney, no person shall be permitted to be present before the grand jury besides the witnesses actually under examination, and no person shall be permitted to be present during the expression of their opinions, or the giving of their votes upon any matter before them.

Who allowed to be present with.

Proceedings to be kept secret. 1838. SEC. 214. Every member of the grand jury shall keep secret whatever he himself, or any other grand juror, may have said, or in what manner he, or any other grand juror, may have voted on a matter before them.

Testimony of witness disclosed when. 1839. SEC. 215. A member of the grand jury may, however, be required by any Court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the Court; or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor. (1)

(1) Grand jurors may be called to testify against a witness who is indicted for perjury, to prove what was sworn to before them, or to show that the indictment is not found by the requisite number; but the testimony of no grand juror can be received to impeach or affect the findings of his fellows.—Nevada v. Logan, 1 Nev., p. 510.

1840. SEC. 216. No grand juror shall be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors. Grand juror not to be questioned as to acts.

1841. SEC. 217. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman. Presentment, how found.

1842. SEC. 218. The presentment, when found, must be presented by the foreman, in the presence of the grand jury, to the Court, and shall be filed by the Clerk. How presented.

1843. SEC. 219. No grand juror, District Attorney, Clerk, Judge, or other officer, shall disclose the fact of a presentment having been made for a felony until the defendant shall have been arrested. But this prohibition shall not extend to disclosure by the issuing or in the execution of a warrant to arrest the defendant. Not to be disclosed.

1844. SEC. 220. A violation of the provisions of the last section shall be punishable as a contempt and as a misdemeanor. Disclosure, how punished.

1845. SEC. 221. If the Court deem that the facts stated in the presentment constitute a public offense, triable within the county, it shall direct the Clerk to issue a bench warrant for the arrest of the defendant. Bench warrants, when to issue.

1846. SEC. 222. The Clerk, on the application of the District Attorney, may accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant, under his signature and the seal of the Court, into one or more districts. Clerk to issue same.

1847. SEC. 223. The bench warrant, upon presentment, shall be substantially in the following form:

COUNTY OF ——.

The People of the United States of the Territory of Nevada, to any Sheriff, Constable, Marshal, or policeman in this Territory: A presentment having been made on the —— day of ——, 18—, to the District Court of the District of ——, charging C. D. with the crime of —— [designating it generally], you are therefore commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this district; or, in case of his absence or inability to act, before the nearest or most accessible magistrate of this district. Form of.

Given under my hand, with the seal of the said Court affixed, this —— day of ——, A. D. 18—.

By order of the Court. G. H., Clerk.

How executed. 1848. SEC. 224. The bench warrant may be served in any district, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on a complaint, except that when served in another district it need not be indorsed by a magistrate of that district.

Proceedings on arrest. 1849. SEC. 225. The magistrate, when the defendant is brought before him, shall proceed to examine the charge contained in the presentment, and hold the defendant to answer the same, or discharge him therefrom, in the same manner, in all respects, as upon a warrant of arrest on complaint.

5.—*The indictment.*

How found. 1850. SEC. 226. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it shall be indorsed "a true bill," and the indorsement shall be signed by the foreman of the grand jury.

Dismissal of charge. 1851. SEC. 227. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the deposition and statement, if any transmitted to them, shall be returned to the Court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Effect of dismissal. 1852. SEC. 228. The dismissal of the charge shall not, however, prevent the same charge from being again submitted to a grand jury, or as often as the Court shall so direct. But, without such direction, it shall not be again submitted.

Names of witnesses to be inserted. 1853. SEC. 229. When an indictment is found, the names of the witnesses examined before the grand jury shall be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the Court.

To be presented to Court. 1854. SEC. 230. An indictment, when found by the grand jury, shall be presented by their foreman, in their presence, to the Court, and shall be filed with the Clerk, and remain in his office as a public record.

Against defendant, not in custody. 1855. SEC. 231. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in sections two hundred and fifty-eight and two hundred and sixty-five, both inclusive, against a defendant who fails to appear for arraignment.

Pleadings prescribed in this Act. 1856. SEC. 232. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this Act.

First pleading, indictment on part of the people. 1857. SEC. 233. The first pleading on the part of the people is the indictment.

What to contain. 1858. SEC. 234. The indictment shall contain the title of the action, specifying the name of the Court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

An indictment should charge a statutory offense in the words of the statute creating it, or in words of similar import.—People v. Logan, 1 Nev., p. 110.

The crime must be directly and positively charged, and not argumentatively.—Id.

The want of a direct allegation of anything material to the description of the substance, nature, or manner of the offense cannot be supplied by any intendment or implication whatever.—Id.

An indictment should not be quashed merely because the grand jury received some illegal or incompetent testimony. If there is any legal testimony to sustain it, it should not be set aside.—Id., 509.

Though the law declares that the grand jury shall receive none but legal evidence in support of an indictment, yet it does not follow that the admission of incompetent testimony will authorize the District Court to set it aside.—Id.

If there be nothing to support the bill but evidence clearly incompetent, and which would not be admissible at the trial, as the testimony of a person rendered incompetent by conviction of an infamous crime, the indictment may be set aside on motion before plea.—Id.

But to authorize the setting aside of an indictment, even where there is no competent evidence to support it, that fact must appear by proof, independent of the testimony of the grand jurors who found the bill, for it is inadmissible for them to show that the indictment was found without testimony, or upon insufficient testimony.—Id.

An indictment which merely states that defendants did "attempt to take, steal, and carry away" certain chattels, etc., without setting out the acts done, or mode and manner of the attempt, is not sufficient under our statute to support the charge of "attempting to commit grand larceny."—State v. Brannan & Kelly, 3 Nev., p. 238.

That part of the indictment which, under the statutory form, first charges that a defendant has committed a certain crime, is merely formal; and if the body of the indictment sufficiently shows the offense charged, and the facts constituting the offense, it will be held good, notwithstanding any defect in the first clause.—State v. Anderson, 3 Nev., p. 354.

The first clause in the indictment may charge that the defendant has committed a certain crime (giving its technical name, if it has one), or it may simply charge that he has committed a felony, or has committed a misdemeanor, as the case may be. It is not indispensable in this clause to give the name or description of the offense charged. Nor when the name and description is given, is it necessary to say whether it is a felony or a misdemeanor.—Id.

The omission of the word "necessary" from the body of the indictment where the offense is charged, is not a fatal defect. To say a weapon is not drawn in self-defense, is a broader and stronger expression than to say it is not done in necessary self-defense. The latter is included within the former expression.—Id.

Under the provisions of our Criminal Practice Act it is not necessary to use the exact words of the statute in defining a statutory offense. Words of similar import will suffice.—Id.

The short form of indictment used in this case held to conform to the requirements of the statute.—State v. Millain, 3 Nev., p. 409.

That clause in the Constitution of the United States which declares "No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment," does not restrict the State Legislatures in prescribing the form of the indictment. It only requires that a grand jury should in some form express its approval of the prosecution before a party can be put on trial for such offense.—Id.

Under the statute of this State any indictment which is good to sustain the simple charge of murder, is equally good to sustain a conviction of the higher crime of murder in the first degree.—Id.

The Legislature has absolute power over the subject of criminal proceedings, and may prescribe such forms of proceedings, indictment, etc., as it sees fit, except in those particulars where its power is restrained by some clause in the State or National Constitutions. There is nothing in either of those instruments which can prevent the Legislature from enacting that a party indicted for simple murder may be found guilty of murder in the first degree.—Id.

Upon philosophical principles, indictment for unlawful homicide should designate the grade of the offense committed, distinctly stating the facts which separate the offense charged from the next lower grade; but the Legislature may in its discretion dispense with all such distinctions, allowing a general indictment for unlawful homicide, and requiring the jury to find the grade of the offense in their verdict.—Id.

INDICTMENT SURPLUSAGE.—In an indictment for assault with a deadly weapon with intent to inflict upon the person of another a bodily injury, which is in other respects good, the mere addition of the words "did strike and stab" are simply surplusage and do not vitiate.—State v. Lawry, 4 Nev., p. 161.

The State v. Millain, 3 Nev., p. 409, as to sufficiency of indictment, approved.—State v. Anderson, 4 Nev., p. 265.

SUFFICIENCY OF INDICTMENT FOR MURDER.—An indictment for murder charged that defendant, at a certain time and place, "without authority of law, and with malice aforethought, killed Noble T. Slocum, by shooting him with a pistol, contrary to the form of the statute:" *Held*, to be sufficient without containing a special averment that by means of the shooting with the pistol aforesaid, the said Noble T. Slocum then and there died. LEWIS, J., dissenting.—Id.

INDICTMENT FOR ROBBERY—OWNERSHIP OF PROPERTY.—Robbery may be committed by the taking of property from the person of one who has nothing but a special right in it; and where an indictment charged that the property was taken from the person of the prosecuting witness, and at the same time alleged it to be the property of another person: *Held*, a sufficient charge of a special property in the prosecuting witness.—State v. Ah Loi, 5 Nev., p. 99.

1859. SEC. 235. It may be substantially in the following form: (1)

Form of indictment.

STATE OF NEVADA, }
County of ——. }

The State of Nevada, plaintiff, against A. B., defendant (or John Doe, whose real name is unknown.) Defendant A. B., above named, is accused by the grand jury of the County of —— of a felony (or if of the crime of murder, etc.,) committed as follows:

The said A. B., on the —— day of ——, A. D. 18—, or thereabouts, without authority of law, and with malice aforethought, killed Richard Roe, by shooting him with a pistol (or with a gun or other weapon, according to the facts.)

If the offense be an assault with an intent to commit murder, the statement may be as follows:

The said A. B., on the —— day of ——, A. D. 18—, in the County of ——, without authority of law, and with malice aforethought, did shoot at Richard Roe with a pistol, with intent to kill him.

If the offense be a misdemeanor, it may be designated by the name or style the offense is usually defined or known, or simply as a misdemeanor, and the facts constituting the offense may be stated in a manner similar to the examples above stated.

The indictment must be signed by the District Attorney.

(1) VENUE MATERIAL IN INDICTMENTS.—An allegation of the county wherein a crime was committed is as material in an indictment as any fact constituting the body of the offense.—State v. Chamberlain, 6 Nev., p. 257.

STATUTORY FORM OF INDICTMENT DEFECTIVE.—The form of an indictment given in the statute of 1867 (Stats. 1867, p. 126,) is insufficient in so far as it omits the venue.—Id.

CONSTRUCTION OF STATUTE CONTAINING FORM OF INDICTMENT.—The section of the criminal statute giving the form of an indictment and omitting the venue therefrom (Stats. 1867, p. 126), is controlled by the next section, which requires a statement of all essential facts.—Id.

OMISSION OF VENUE IN INDICTMENT NOT AMENDABLE.—An indictment which omits to state the venue cannot be amended in that respect.—Id.

MEANING OF "INDICTMENT OF A GRAND JURY" IN CONSTITUTION.—Where an indictment, which omitted the essential allegation of venue, was amended in that respect: *Held*, that it was no longer an "indictment of a grand jury," within the meaning of Article I, section eight, of the Constitution.—Id.

AMENDMENT OF INDICTMENT.—A Court has no more power to add any material charge, accusation, or allegation to an indictment, than it has to find a bill in the first instance.—Id.

Must be direct, and contain what.

1860. SEC. 236. The indictment must be direct, and contain, as it regards: First—The party charged. Second—The offense charged. Third—The particular facts of the offense charged, so far as necessary to constitute a complete offense, but the evidence tending to prove the change need not be stated. It shall not be necessary to set forth in the indictment the character of weapon used, nor that any weapon was used in the commission of the offense, unless the using of such weapon is a necessary ingredient in the commission of the offense. [As amended March 13, Stats. 1867, p. 126.]

Error in defendant's name.

1861. SEC. 237. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceeding his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

To charge only one offense.

1862. SEC. 238. The indictment shall charge but one offense, but it may set forth that offense in different forms under different counts. (1)

(1) INDICTMENT — COUNTS SETTING OUT OFFENSE IN DIFFERENT FORMS.—Where an indictment for robbery contained two counts, the only difference being that one charged the property taken as that of Wells, Fargo & Co., and the other as that of their messenger in custody thereof at the time: *Held*, authorized under Sec. 238 of the Criminal Practice Act, and not amenable to the objection of charging more than one offense.—State v. Chapman, 6 Nev., p. 320.

Stating time of offense.

1863. SEC. 239. The precise time at which it was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding of the same, except when the time is a material ingredient of the offense.

Erroneous allegations not material.

1864. SEC. 240. When an offense involves the commission, or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material.

Construction of words used.

1865. SEC. 241. The words used in an indictment shall be construed in the usual acceptance in common language, except such words and phrases as are defined by law, which are to be construed according to their legal meaning.

Words used in statute need not be strictly followed.

1866. SEC. 242. Words used in a statute to define a public offense, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

Indictment, when sufficient.

1867. SEC. 243. The indictment shall be sufficient, if it can be understood therefrom: First—That it is entitled in a Court having authority to receive it, though the name of the Court be not accurately set forth. Second—That it was found by a grand jury of the district in which the Court was held. Third—That the defendant is named, or, if his name cannot be discovered,

Same.

that he be described by a fictitious name, with a statement that he has refused to discover his real name. Fourth—That the offense was committed at some place within the jurisdiction of the Court. Fifth—That the offense was committed at some time prior to the time of finding the indictment. Sixth—That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. Seventh—That the act or omission charged as the offense is stated with such a degree of certainty as to enable the Court to pronounce judgment upon a conviction according to the right of the case.

Defect in form, amendment of.

1868. SEC. 244. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon, be affected by reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant; and the Court may, on application, direct the indictment to be amended to supply a deficiency or omission, when, by such amendments, the nature of the charge shall not be changed, and the defendant's defense to the action on the merits will not be prejudiced thereby; *provided*, any amendment made during the trial, or within five days thereof, on motion, and without any showing therefor, shall entitle the defendant to a postponement of the trial till next term. [As amended March 13, Stats. 1867, p. 126.]

Postponement of trial.

What need not be stated.

1869. SEC. 245. Neither presumption of law, nor matters of which judicial notice is taken, need be stated in an indictment.

Judgment, how pleaded.

1870. SEC. 246. In pleading a judgment, or other determination of or proceeding before a Court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated, but it may be stated that the judgment or determination was duly made, or the proceeding duly had before such Court or officer. The facts constituting the jurisdiction, however, must be established on the trial.

Private statute, how pleaded.

1871. SEC. 247. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the Court shall thereupon take judicial notice thereof.

Indictment for libel, what sufficient.

1872. SEC. 248. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Misdescription of forged instruments, when immaterial.

1873. SEC. 249. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

Perjury, indictment for, what to set forth.

1874. SEC. 250. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what Court, or before whom, the oath alleged to be false was taken, and that the Court or the person before whom it was taken had authority to administer the same, with proper allegations as to the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, or the commission, or the authority of the Court or person before whom the perjury was committed.

Indictment against several.

1875. SEC. 251. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Principal and accessory, no distinction, when.

1876. SEC. 252. No distinction shall exist between an accessory before the fact and the principal, or between principals in the first and second degree, in cases of felony; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals.

Accessory after the fact may be punished alone.

1877. SEC. 253. An accessory after the fact to the commission of a felony may be indicted and punished, though the principal felon may be neither tried nor indicted.

Compounding offenses

1878. SEC. 254. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity, or a reward, or an engagement, or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

When defendant must be arraigned.

1879. SEC. 255. When the indictment is filed the defendant must be arraigned thereon before the Court in which it is found, except in the cases mentioned in sections two hundred and seventy-six and two hundred and seventy-seven.

When must appear personally.

1880. SEC. 256. If the indictment be for a felony, the defendant must be personally present; but if for a misdemeanor, his personal appearance is unnecessary, and he may appear upon arraignment by counsel.

How arraigned.

1881. SEC. 257. When his personal appearance is necessary, if he be in custody, the Court may direct the officer in whose custody he is to bring him before it to be arraigned, and the officer shall do so accordingly.

Failing to appear.

1882. SEC. 258. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the Court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

Warrant for arrest.

1883. SEC. 259. The Clerk, on the application of the District Attorney, may accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant into one or more counties.

1884. SEC. 260. The bench warrant upon the indictment shall, if the offense be a felony, be substantially in the following form:

Bench warrant, form of.

"COUNTY OF ——.

"The People of the United States of the Territory of Nevada, to any Sheriff, Constable, Marshal, or policeman in this

Territory: An indictment having been found on the —— day of ——, A. D. 18—, in the District Court of the Judicial District of the County of ——, charging C. D. with the crime of [designating it generally]: you are therefore commanded forthwith to arrest the above named C. D., and bring him before that Court to answer the indictment; or, if the Court have adjourned for the term, that you deliver him into the custody of the Sheriff of the County of ——. Given under my hand, with the seal of the Court affixed, this the —— day of ——, A. D. 18—. [SEAL.]

"By order of the Court. E. F., Clerk."

1885. SEC. 261. The defendant, if the offense be punishable with death, when arrested under the warrant, shall be held in custody by the Sheriff of the county in which the indictment is found, unless admitted to bail, on an examination upon a writ of habeas corpus. Proceedings on arrest.

1886. SEC. 262. If the offense be not capital, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "Or, if he require it, that you take him before any magistrate in that district, or in the district in which you arrested him, that he may give bail to answer to the indictment." Form of warrant.

1887. SEC 263. If the offense charged be not capital, the Court, upon directing the bench warrant to issue, shall fix the amount of bail, and an indorsement shall be made upon the bench warrant, signed by the Clerk, to the following effect: "The defendant is to be admitted to bail in the sum of —— dollars." When offense not capital.

1888. SEC. 264. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county. Warrant, how served

1889. SEC. 265. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in all respects thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon, as provided in sections one hundred and twelve and one hundred and fifteen, both inclusive. Bail in another county.

1890. SEC. 266. When the indictment is for felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the Court to which the indictment is presented may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order. Further bail, when required.

1891. SEC. 267. If such order be made, and the defendant be present, he shall be forthwith committed accordingly. If he be not present, a bench warrant shall be issued and proceeded upon in the manner provided for in this Act. Defendant may be committed.

1892. SEC. 268. If the defendant appear for arraignment without counsel, he shall be informed by the Court that it is his right to have counsel before being arraigned, and shall be asked if he desire the aid of counsel. Counsel for defendant.

Arraignment, how made.

1893. SEC. 269. The arraignment must be made by the Court, or by the Clerk or District Attorney under his direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it, and in asking him whether he pleads guilty or not guilty to the indictment.

Defendant to declare true name.

1894. SEC. 270. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name he must then declare his true name, or be proceeded against by the name in the indictment.

When other name not given.

1895. SEC. 271. If he give no other name, the Court may proceed accordingly.

True name enter on minutes.

1896. SEC. 272. If he allege that another name is his true name, the Court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Time to answer.

1897. SEC. 273. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the Court may deem reasonable, to answer the indictment.

Answer, demur, or plead.

1898. SEC. 274. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the Court may have allowed him, he may answer to the arraignment—either move the Court to set aside the indictment, or may demur or plead thereto.

Indictment, setting aside.

1899. SEC. 275. The indictment shall be set aside by the Court in which the defendant is arraigned, and upon his motion, in either of the following cases: First—Where it is not found indorsed and presented as prescribed in this Act. Second—Where the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment or indorsed thereon. Third—Where any person is permitted to be present during the session of the grand jury while the charge embraced in the indictment is under consideration, except as provided in section two hundred and thirteen.

Setting aside, when not held to answer.

1900. SEC. 276. Where the defendant had not been held to answer before the finding of the indictment, he may move to set it aside on any ground which would have been good ground for challenge, either to the panel or any individual grand juror.

Motion not made, objections waived.

1901. SEC. 277. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the last two sections.

Hearing of motion.

1902. SEC. 278. The motion shall be heard when it is made, unless for good cause the Court shall postpone the hearing to another time.

Motion denied, must answer.

1903. SEC. 279. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

Motion granted, defendant discharged.

1904. SEC. 280. If the motion be granted, the Court shall order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he have deposited money instead of bail, that the same shall be refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

1905. SEC. 281. If the Court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Case resubmitted. Proceedings.

1906. SEC. 282. Unless a new indictment be found before the next grand jury of the district is discharged, the Court shall, on the discharge of such grand jury, make the order prescribed in section two hundred and eighty.

Order for discharge.

1907. SEC. 283. An order to set aside an indictment, as provided in this Act, shall be no bar to a future prosecution for the same offense.

Indictment set aside, no bar.

1908. SEC. 284. The only pleading on the part of the defendant is either a demurrer or a plea.

Pleadings by defendant.

1909. SEC. 285. Both the demurrer and the plea must be put in, in open Court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

Demurrer and plea, when put in

1910. SEC. 286. The defendant may demur to the indictment when it shall appear upon the face thereof either: First—That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the Court. Second—That it does not substantially conform to the requirements of sections two hundred and thirty-four and two hundred and thirty-five. Third—That more than one offense has been charged in the indictment. Fourth—That the facts stated do not constitute a public offense. Fifth—That the indictment contains any matter which, if true, would constitute a legal justification, or excuse of the offense charged, or other bar to the prosecution.

Demurrer, for what cause.

1911. SEC. 287. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded.

Form of, and what to specify.

1912. SEC. 288. Upon the demurrer being filed, the objections presented thereby shall be heard either immediately, or at such time as the Court may appoint.

Hearing of.

1913. SEC. 289. Upon considering the demurrer, the Court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered on the minutes.

Judgment on demurrer.

1914. SEC. 290. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution of the same offense, unless the Court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

Effect of allowing demurrer.

1915. SEC. 291. If the Court do not direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail shall be exonerated, or if he has

Case not resubmitted, effect of.

deposited money instead of bail, the money shall be refunded to him.

Case submitted, proceeding. 1916. SEC. 292. If the Court direct that the case be resubmitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-one and two hundred and eighty-two.

Effect of disallowing demurrer. 1917. SEC. 293. If the demurrer be disallowed, the Court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the Court may allow; if he do not plead, judgment shall be pronounced against him.

Objections to demurrer, how taken advantage of. 1918. SEC. 294. When the objections mentioned in section two hundred and eighty-six appear upon the face of the indictment, they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the Court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, and in arrest of judgment.

Pleas, kinds of. 1919. SEC. 295. There are three kinds of pleas to an indictment: A plea of: First—Guilty. Second—Not guilty. Third—A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of "not guilty."

To be oral. 1920. SEC. 296. Every plea shall be oral, and shall be entered upon the minutes of the Court.

Entry of, form of. 1921. SEC. 297. The plea shall be entered in substantially the following form: First—If the defendant plead guilty, "the defendant pleads that he is guilty of the offense charged in this indictment." Second—If he plead not guilty, "the defendant pleads that he is not guilty of the offense charged in the indictment." Third—If he plead a former acquittal or conviction, "the defendant pleads that he has already been convicted (or acquitted, as the case may be,) of the offense charged in the indictment, by the judgment of the Court of —— [naming it], rendered at —— [naming the place], on the —— day of ——."

Plea of guilty, how put in. 1922. SEC. 298. A plea of guilty can in no case be put in, except by the defendant himself, in open Court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

May be withdrawn 1923. SEC. 299. The Court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted. (1)

(1) When a prisoner has pleaded "not guilty," it is in the discretion of the Court whether or not to allow him to withdraw that plea to interpose another.—State v. Salge, 2 Nev., p. 321.

The prisoner has, however, an absolute right to withdraw that plea to interpose any good defense which has arisen since the last continuance of the case.—Id.

The Court properly refused to allow defendant to withdraw his plea of "not guilty," to interpose a plea that was not sufficient in law as a defense, and besides being defective in form, could not by amendment be made available.—Id.

1924. SEC. 300. The plea of not guilty shall be deemed a denial of every material allegation in the indictment. Plea of not guilty, effect of.

1925. SEC. 301. All matters of fact, tending to establish a defense other than that specified in the third subdivision of section two hundred and ninety-five, may be given in evidence under the plea of not guilty. Evidence under.

1926. SEC. 302. If the defendant were formerly acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offense. Former acquittal, what deemed.

1927. SEC. 303. When, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the same offense, notwithstanding any defect, in form or substance, in the indictment on which he was acquitted. Same.

1928. SEC. 304. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment, as provided in section four hundred and twelve. Effect of former acquittal or conviction.

1929. SEC. 305. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered. Defendant mute, plea of not guilty.

1930. SEC. 306. A criminal action, prosecuted by indictment, may be removed from the Court in which it is pending, on the application of the defendant or State, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending. (1) [As amended, Stats. 1869, p. 66.] When criminal actions may be removed.

(1) The action of the lower Court, in granting or refusing a change of venue, is a matter of judicial discretion. If that discretion is abused, it becomes the duty of an appellate Court to afford relief.—State v. Millain, 3 Nev., p. 409.

Two circumstances should influence a Court to grant a change of venue. One, the impossibility of obtaining a fair and impartial jury; the other, such a state of public excitement against the prisoner as would be likely to overawe and intimidate even a fair jury.—Id.

The fact that threats were made against the prisoner by parties who were not shown to have been either numerous or influential, was not sufficient to show there was danger of the jury being intimidated.—Id.

Where a defendant on his motion for a change of venue showed a state of facts strongly tending to the conclusion that he could not obtain a fair jury, it was not error in the Court to withhold its decision upon the motion until an examination was had of the jurors then in attendance, and being satisfied from such examination that a fair jury could be obtained, to refuse to make the order for change of venue.—Id.

SHOWING FOR CHANGE OF VENUE.—The mere facts that a criminal charge has been pending a long time, and been generally talked about, and discussed throughout the county, and that a number of rich and influential persons in the county have interested themselves in procuring a conviction, do not sufficiently show that a fair and impartial trial cannot be had; and the refusal of a change of venue under such circumstances is not error.—State v. Lawry, 4 Nev., p. 161.

Application, how made. 1931. SEC. 307. The application must be made in open Court, and in writing, verified by the affidavit of the defendant or District Attorney, and a copy of said affidavit must be served on the adverse party at least one day before the application is made to the Court; *provided*, the application may be supported or opposed by other affidavits or other evidence, or witnesses may be examined in open Court. [As amended Feb. 20, Stats. 1869, p. 66.]

Where, and to what Court order made 1932. SEC. 308. If the Court be satisfied that the representation of the party making the application is true, an order shall be made for the removal of the action to the District Court of a county which is free from the like objection. [As amended Feb. 20, Stats. 1869, p. 66.]

Order entered on minutes, copy of record transmitted. 1933. SEC. 309. The order of removal shall be entered on the minutes, and the Clerk shall immediately make out and transmit a certified copy of the entry, with a certified copy of the record, pleadings, and proceedings in the action, including the recognizances for the appearance of the defendant, and of the witnesses, to the Court to which the action is removed.

Order to direct removal of defendant. 1934. SEC. 310. If the defendant be in custody, the order shall direct his removal by the Sheriff of the county where he is imprisoned to the custody of the Sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly.

Proceedings after removal. 1935. SEC. 311. The Court to which the action is removed shall proceed to trial and judgment therein, as if the action had been commenced in such Court. If it be necessary to have any of the original pleadings or other papers before such Court, the Court from which the action is removed shall, at any time, on application of the District Attorney or the defendant, order such papers or pleadings to be transmitted by the Clerk, a certified copy thereof being retained.

Issue of fact arises. 1936. SEC. 312. An issue of fact arises: First, upon a plea of not guilty; or, second, upon a plea of a former conviction or acquittal of the same offense.

How tried. 1937. SEC. 313. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed, by order of the Court, into some other county.

Jury trial, how formed. 1938. SEC. 314. Trial juries, for criminal actions, shall be formed in the same manner as trial juries for civil actions.

Docket of action, how kept. 1939. SEC. 315. The Clerk shall keep a docket of all the criminal actions pending in the Court, in which he shall enter each indictment according to the date of filing, specifying, opposite the title of each action, whether it be for a felony or misdemeanor, or whether the defendant be in custody or on bail.

Issues on docket, how disposed of.

1940. SEC. 316. The issues on the docket shall be disposed of in the following order, unless upon the application of either party for good cause, shown by affidavit, and upon two days notice to the opposite party, with a copy of the affidavit in support of the application, the Court shall direct an indictment to be tried out of its order: First—Indictments for felony when the defendant is in custody. Second—Indictments for misdemeanor when the defendant is in custody. Third—Indictments for felony when the defendant is on bail. Fourth—Indictments for misdemeanor when the defendant is on bail.

Time to prepare for trial.

1941. SEC. 317. After his plea, the defendant shall have at least two days to prepare for his trial, if he require it.

Postponement of trial.

1942 SEC. 318. When an indictment is called for trial, the Court may, upon sufficient cause, shown by affidavit, direct the trial to be postponed to another day of the same term, or the next term. But in all cases where a continuance is granted upon the application of either party, the Court may require, as a condition of granting such continuance, that the party applying therefor consent to the taking, forthwith, or at any time to be fixed by the Court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken. Such deposition shall be taken in the same manner that depositions are required to be taken in section one hundred and seventy-one of this Act. The Court shall also have authority to require all witnesses to enter into recognizances, in such sum as the Court may order, with or without sureties, to appear and testify on the day to which the case may be continued; *provided*, that any witness who is unable to procure sureties for his attendance may be discharged on his own recognizance, upon giving his deposition in the manner prescribed in section one hundred and seventy-one of this Act. All depositions taken in pursuance of any of the provisions of this Act may be read in evidence, subject to legal objections taken at the time of taking the same, on the trial of the cause, whenever it shall appear that the personal attendance of the witness could not, with due diligence, be obtained, or when he has left the State, or become of unsound mind, or is too sick or infirm to attend, or is dead. (1) [As amended March 13, Stats. 1867, p. 126.]

(1) FAILURE TO PROCURE JURY GROUND FOR CONTINUANCE.—If the prosecution in a criminal case makes all reasonable efforts to impanel a jury at the first term at which the case is triable, but without success, and it does not appear that a jury could not be had at the next term, there is a good cause for a continuance on its motion for the term.—Ex Parte Stanley, 4 Nev., p. 113.

CONTINUANCE WITHOUT AFFIDAVIT.—Section 318 of the Criminal Practice Act, confers upon the Courts the right to continue the trial of a criminal case upon a proper showing by affidavit; but if the fact authorizing a continuance is within the judicial knowledge of the Court, such as the impossibility of impaneling a jury at the term, an affidavit is unnecessary. Id.

INDEFINITE POSTPONEMENT OF CRIMINAL CASE.—If it appear that a jury cannot be procured in a criminal case at the term at which it is regularly triable, an order of indefinite postponement is irregular, but it does not operate as a release of the prisoner.—Id.

BY LEWIS, J.—*Query*.—If, in a criminal case, all efforts of the prosecution to procure a jury at the term at which the case is properly triable fail, and it is clear that a jury cannot be had at the next term, and a continuance would therefore be useless, should not the prisoner be discharged?—Id.

CONTINUANCE BY COURT ON ITS OWN MOTION.—The trial of a criminal case having been fixed for the last day but one of a term, at defendant's instance, he then applied for a continuance, which was refused, and the Court proceeded to impanel a jury, which, however, not being completed until near noon the next day, the Court then, deeming the remainder of the day too short a time for the trial, discharged before it was sworn and continued the term: *Held*, no error.—State v. Lawry, 4 Nev., p. 161.

When a prisoner makes out a proper case for continuance, on account of the absence of a material witness, it is error to compel him to go to trial on the admission of the District Attorney that the witness, if present, would swear to the facts as stated by defendant.—State v. Salge, 2 Nev., p. 321.

Although the prisoner may not have made out a very clear case for a continuance, still, if the Court below was of opinion that injustice was done the prisoner because of the absence of his witness, the Court was justified in granting a new trial.—Id.

WAIVER OF OBJECTIONS TO AFFIDAVITS FOR CONTINUANCE.—Where in a criminal case, on motion for continuance on the ground of absence of witnesses, no objection was made that the affidavits did not set forth the materiality of their testimony, but it appeared that the Court assumed its materiality: *Held*, that it would be unfair to allow the objection to be made for the first time in the Supreme Court.—State v. Chapman, 6 Nev., p. 320.

CONTINUANCE WITHIN DISCRETION OF COURT.—A continuance in a criminal case is within the discretion of the Court, and unless there is an abuse of its discretion, its action will be sustained.—Id.

DILIGENCE TO PROCURE CONTINUANCE.—Affidavits for continuance in a criminal case on account of the absence of witnesses for defense, should show diligence in attempting to procure their attendance, that at least reasonable means had been taken to ascertain their whereabouts, and that there was some reasonable probability that their attendance could be procured within a proper time.—Id.

Challenging the jury. 1943. SEC. 319. A challenge is an objection made to the trial jurors, and is of two kinds: First—To the panel. Second—To an individual juror.

By several defendants. 1944. SEC. 320. When several persons, jointly indicted, are tried together, they are not allowed to sever their challenges, but must join therein. [As amended Feb. 20, Stats. 1873, p. 62.]

Panel. 1945. SEC. 321. A panel is a list of jurors returned by a Sheriff to serve at a particular Court, or for the trial of a particular cause.

To the panel. 1946. SEC. 322. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

On what founded. 1947. SEC. 323. A challenge to the panel can only be founded on a material departure from the forms prescribed by statute in respect to the drawing and return of the jury, or on the intentional omission of the Sheriff to summon one or more of the jurors drawn.

When and how to be taken. 1948. SEC. 324. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge. (1)

(1) A challenge to the panel of trial jurors must be in writing, specifically stating the grounds of challenge, or other facts on which the challenge is based.—State v. Millain, 3 Nev., p. 409.

CHALLENGE TO JUROR MUST SPECIFY GROUNDS.—Where the only specification of ground of challenge to a juror was "for cause:" *Held*, entirely insufficient, and that on appeal no objection would be entertained.—State v. Chapman, 6 Nev., p. 320.

Exception to. 1949. SEC. 325. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the Court.

Trial of. 1950. SEC. 326. Upon the exception, the Court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Exception may be withdrawn. 1951. SEC. 327. If, on the exception, the Court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. **Amending challenge.** If the exception be allowed, the Court may, in like manner, permit an amendment of the challenge.

Denial and trial of. 1952. SEC. 328. If the challenge be denied, the denial may, in like manner, be oral, and shall be entered on the minutes of the Court, and the Court shall proceed to try the question of fact.

Witnesses and trial of. 1953. SEC. 329. Upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the grounds of challenge.

On account of bias of officer summoning. 1954. SEC. 330. When the panel is formed from persons whose names are not drawn from the grand jury box, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good ground of challenge to a juror. Such objection shall be made in the same form, and determined in the same manner as when made to a juror.

Effect of allowing. 1955. SEC. 331. If, either upon an exception to the challenge, or a denial of the fact, the challenge be allowed, the Court shall discharge the jury, so far as the trial of the indictment in question is concerned. If it be disallowed, the Court shall direct the jury to be impaneled.

Challenge to the polls. 1956. SEC. 332. Before a juror is called, the defendant must be informed by the Court, or under its direction, that if he intend to challenge any individual juror, he must do so when the juror appears, and before he is sworn.

Kinds of. 1957. SEC. 333. A challenge to an individual juror is either: First—Peremptory; or, Second—For cause.

When to be taken. 1958. SEC. 334. It must be taken when the juror appears, and before he is sworn, but the Court may for good cause permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory, how taken. 1959. SEC. 335. A peremptory challenge may be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the Court shall exclude him. (1)

(1) PEREMPTORY CHALLENGE AFTER JUROR SWORN.—The allowance of a peremptory challenge to a juror who has been accepted and sworn is not a matter of right, and a refusal on the part of the Court to allow it is not error.—State v. Anderson, 4 Nev., p. 265.

SWEARING OF JURORS BEFORE PANEL COMPLETED.—It is the better practice in criminal cases to have the panel of jurors full before any of them are sworn in the case, so as to give parties the fullest benefit of peremptory challenges, but the law authorizes the swearing of jurors before the panel is complete, and such course is not error.—Id.

Peremptory challenges. 1960. SEC. 336. If the offense charged be punishable with death, or with imprisonment in the State Prison for life, the defendant is entitled to ten, and the State to five peremptory challenges. On a trial for any other offense, the defendant is entitled to five, and the people to three peremptory challenges. [As amended March 14, Stats. 1865, p. 404.]

For cause. 1961. SEC. 337. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either: First—General, that the juror is disqualified from serving in any case; or, Second—Particular, that he is disqualified from serving on the case on trial.

General causes of. 1962. SEC. 338. General causes of challenge are: First—A conviction for felony. Second—A want of any of the qualifications prescribed by the statute to render a person a competent juror. Third—Unsoundness of mind, or such defect in the faculties of the mind or the organs of the body as renders him incapable of performing the duties of a juror.

1963. SEC. 339. Particular causes of challenge are of two kinds: First—For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this Act as implied bias. Second—For the existence of a state of mind on the part of the juror in reference to the case which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this Act as actual bias. Particular causes of.

1964. SEC. 340. A challenge for implied bias may be taken for all or any of the following causes, and for no other: First—Consanguinity, or affinity within the fourth degree, to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant. Second—Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages. Third—Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution. Fourth—Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment. Fifth—Having served on a trial jury which has tried another person for the offense charged in the indictment. Sixth—Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it. Seventh—Having served as a juror in a civil action brought against the defendant for the act charged as an offense. Eighth—Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged. Ninth—If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror. (1) Challenge for implied bias. Causes of.

(1) Held error to disallow a challenge to a juror who, on his *voir dire*, stated "that he was born in the province of Canada, and lived there until he was twenty-one years of age; that he had been told that his father was a citizen of the United States prior to the time of removing to Canada; that he had no knowledge that his father became a citizen of Canada; and also, that he did not know of which country his father claimed citizenship; that his residence and home was in Canada so long as he knew anything about it; and that he (the juror) had never been naturalized.—State vs. Salge, 1 Nev., p. 455.

When all that is known of a person's citizenship is that his residence and home has been in a foreign country, the mere statement of a stranger that he was a citizen of the United

States is not sufficient to establish his citizenship in this country against the presumption which would arise from his home being in another country.—Id.

This Court cannot review the action of the Court below in disallowing a challenge for cause, when the party objecting makes no specification as to the nature of the objection upon which he interposes the challenge. The party challenging should specify the grounds of his challenge.—State v. Squaires, 2 Nev., p. 227.

It is error to allow a jury to disperse after impanelment without the consent of the prisoner. But a jury is not properly impaneled until they are sworn and charged with the case.—Id.

WAIVER OF OBJECTIONS TO JURORS BY FAILURE TO CHALLENGE.—If a defendant in a criminal case accepts a juror without objection, whom he knows to have formed and expressed an unqualified opinion as to his guilt, he cannot after verdict raise this objection.—State vs. Anderson, 4 Nev., p. 265.

When there is any probability that a juror is disqualified, and the Court is unable to determine it, by reason of its inability to establish the fact constituting such disqualification, it is not required to hazard the regularity of its proceeding by permitting such person to sit as a juror, but may excuse him at any time before he is charged with the case.—Nevada v. Kelly, 1 Nev., p. 224.

Exemption not cause for.

1965. SEC. 341. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

How taken.

1966. SEC. 342. In a challenge for an implied bias, one or more of the causes stated in section three hundred and forty must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the Court.

Exceptions to, and proceedings thereon.

1967. SEC. 343. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as prescribed in sections three hundred and twenty-five and three hundred and twenty-six, except that if the exception be allowed the juror shall be excluded. He may orally deny the facts alleged as the ground of challenge.

Trial of.

1968. SEC. 344. If the facts be denied, the challenge shall be tried as follows: First—If it be for implied bias, by the Court. Second—If it be for actual bias, by triers.

Triers, who to be.

1969. SEC. 345. The triers shall be three impartial persons, not on the jury panel, appointed by the Court. All challenges for actual bias shall be tried by three triers thus appointed, a majority of whom may decide.

Oath of triers.

1970. SEC. 346. The triers shall be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are biased against the challenging party, and to decide the same truly, according to the evidence.

1971. SEC. 347. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and shall be compelled to answer every question pertinent to the inquiry therein. **Juror challenged may be witness.**

1972. SEC. 348. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge. **Other testimony.**

1973. SEC. 349. On the trial of a challenge for implied bias, the Court shall determine the law and the facts, and shall either allow or disallow the challenge, and direct an entry accordingly on the minutes. **Court to determine law and facts.**

1974. SEC. 350. On the trial of a challenge for actual bias, when the evidence is concluded, the Court shall instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial, and that if, from the evidence, they believe him free from such a bias, they must find the challenge not true. The Court shall give them no other instructions. **Instructions to triers.**

1975. SEC. 351. The triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror shall be excluded. **Triers' decision final.**

1976. SEC. 352. All challenges to an individual juror, except peremptory, must be first taken by the defendant, and then by the people, and each party must exhaust all his challenges to each juror as he is called, before the other begins. **Order of taking challenges.**

1977. SEC. 353. The challenges of either party need not all be taken at once, but they must be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class: First, to the panel; second, to an individual juror for a general disqualification; third, to an individual juror for implied bias; fourth, to an individual juror for actual bias. **Same.**

1978. SEC. 354. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted. **Final peremptory challenge.**

6.—*Trial.*

1979. SEC. 355. The jury having been impaneled and sworn, the trial shall proceed in the following order: First—If the indictment be for felony, the Clerk must read the indictment and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with. Second—The District Attorney or other counsel for the people must open the cause, and offer the evidence in support of the indictment. Third—The defendant or his counsel may then open the defense, and offer his evidence in support thereof. Fourth—The parties may then respectively offer rebutting testimony only, unless the Court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause. Fifth—When the evidence is concluded, unless the case is submitted to the **Order of.**

jury on either side, or on both sides, without argument, the counsel for the people must open and must conclude the argument. Sixth—The Judge shall then charge the jury, if requested by either party; he may state the testimony and declare the law, but shall not charge the jury in respect to matters of fact; such charge shall be reduced to writing before it is given; and in no case shall any charge or instructions be given to the jury otherwise than in writing, unless by the mutual consent of the parties.

When prescribed order may be departed from.

1980. SEC. 356. When the state of the pleadings require it, or in any other case, for good reasons, and in the sound discretion of the Court, the order prescribed in the last section may be departed from.

Counsel, number of.

1981. SEC. 357. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offense, the Court may in its discretion restrict the argument to one counsel on each side.

Innocence presumed.

1982. SEC. 358. A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to be acquitted.

Reasonable doubt of guilt. Degrees of guilt.

1983. SEC. 359. When it legally appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

When defendants may be tried separately.

1984. SEC. 360. When two or more defendants are jointly indicted for any offense, they shall be jointly tried, unless for good cause shown by the prosecution or defense, the Court shall otherwise direct.

When defendant may turn State's evidence.

1985. SEC. 361. When two or more persons are included in the same indictment, the Court may at any time before the defendant has gone into his defense, on the application of the District Attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

When defendant may be witness for codefendant.

1986. SEC. 362. When two or more persons are included in the same indictment, and the Court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it shall order him to be discharged from the indictment, before the evidence shall be deemed closed, that he may be a witness for his codefendant.

Discharge deemed acquittal.

1987. SEC. 363. The order mentioned in the two last sections shall be deemed an acquittal of the defendant discharged, and shall be a bar to another prosecution for the same offense.

Rape, crime against nature, proof of.

1988. SEC. 364. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

Accomplice, evidence of, to be corroborated.

1989. SEC. 365. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely show the commission of the offense or the circumstances thereof. (1)

(1) CRIMINAL LAW—EVIDENCE TO CORROBORATE ACCOMPLICE.—Where on appeal in a criminal case it was claimed that certain evidence given for the purpose of corroborating that of an accomplice was not sufficient: *Held*, that the question before the Supreme Court was not as to the weight of the evidence, but as to whether it was corroborative within the meaning of section three hundred and sixty-five of the Criminal Practice Act.—State v. Chapman, 6 Nev., p. 320.

1990. SEC. 366. If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the Court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offense. Proceedings where facts show offense greater than charged.

1991. SEC. 367. If an indictment for the higher offense be dismissed by the grand jury, or be not found at or before the next term, the Court shall again proceed to try the defendant on the original indictment. Same.

1992. SEC. 368. The Court may also direct the jury to be discharged when it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law. When jury may be discharged.

1993. SEC. 369. If the jury be discharged because the Court has not jurisdiction of the offense charged in the indictment, and it appear that it was committed out of the jurisdiction of this Territory, it shall order the defendant to be discharged. When defendant discharged.

1994. SEC. 370. If the offense were committed within the exclusive jurisdiction of another district of this Territory, the Court shall direct the defendant to be committed for such time as shall be deemed reasonable, to await a warrant from the proper county for his arrest; or if the offense be a misdemeanor only, it may admit him to bail in a recognizance, with sufficient sureties, that he will, within such time as the Court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the Sheriff of the county where the trial was had at a certain time particularly designated in the recognizance, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the Court may fix, and to be mentioned in the recognizance. Proceedings when exclusive jurisdiction of offense is in another county.

1995. SEC. 371. In the case provided for in the last section, the Clerk shall forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the District Attorney of the proper county, the expense of which transmission shall be chargeable to that county. Clerk to transmit papers.

1996. SEC. 372. If the defendant be not arrested, as provided in section three hundred and seventy, on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money, deposited When defendant discharged.

instead of bail, shall be refunded, as the case may be, and the sureties in the recognizance shall be discharged.

Proceedings on arrest in such cases.

1997. SEC. 373. If he be arrested, the same proceedings shall be had thereupon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

Proceedings when facts do not constitute offense.

1998. SEC. 374. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the Court shall order that the defendant, if in custody, be discharged, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless, in the opinion of the Court, a new indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury.

Proceedings when case submitted anew.

1999. SEC. 375. If the Court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-one and two hundred and eighty-two, both inclusive.

Acquittal, when Court may advise, effect of.

2000. SEC. 376. If, at any time after the evidence on either side is closed, the Court deem the same insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury shall not be bound by such advice, nor shall the Court for any cause prevent the jury from giving a verdict, except as provided in sections three hundred and sixty-one, three hundred and sixty-two, three hundred and sixty-six, and three hundred and sixty-eight.

When view may be had

2001. SEC. 377. Whenever, in the opinion of the Court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the Sheriff, to the place, which shall be shown to them by a person appointed by the Court for that purpose.

No person allowed to speak to jury.

2002. SEC. 378. No person shall be suffered to speak to the jury on any subject connected with the trial, and the officer shall return them into Court without unnecessary delay, or at a specified time.

Juror must disclose knowledge of controversy in Court.

2003. SEC. 379. If a juror have any personal knowledge respecting a fact in controversy in the case, he must declare the same in open Court, during the trial. If, during the retirement of the jury, a juror declare any fact which could be evidence in the cause, as of his own knowledge, the jury must return into Court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

Must be witness.

Jury, how to be kept.

2004. SEC. 380. The jury sworn to try an indictment for a misdemeanor may, at any time during the trial, in the discretion of the Court, be allowed to separate. In all cases, on the trial of an indictment for felony, the jurors sworn shall be kept together until they are finally discharged by the Court from further consideration of the cause. At each adjournment or recess of the Court, which may occur during the trial, the Sheriff, or his deputy, shall keep the jury together in his charge, and it shall be the duty of the Sheriff, at the expense of the county, to provide a suitable place for the board and lodging of the jury. The Court, at each recess or adjournment during the trial, shall administer to the Sheriff, or his deputy, the following oath:

"You do solemnly swear that you will, during this recess or adjournment (as the case may be), keep this jury together, and that you will return them into Court at the opening thereof, and that in the meantime you will not allow any person to speak to them, or either of them, nor speak to them, or either of them, yourself, on the subject of the case now on trial, so help you God." Oath of officer in charge.

2005. SEC. 381. The jury shall also, at each adjournment of the Court, whether they be permitted to separate or be kept in charge of officers, be admonished by the Court that it is their duty not to converse among themselves, or with any one else, on any subject connected with the trial, or to form, or express any opinion thereon until the cause is finally submitted to them. To be admonished on each adjournment.

2006. SEC. 382. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case, a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impaneled. Juror sick.

2007. SEC. 383. The Court shall decide all questions of law which shall arise in the course of the trial. Court to decide questions of law.

2008. SEC. 384. On the trial of an indictment for libel, the jury shall have the right to determine the law and the fact. Law and fact, etc.

2009. SEC. 385. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the Court, saving the right of the defendant to except questions of fact by the jury. And, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the Court. Jury to receive law as laid down by Court.

2010. SEC. 386. In charging the jury, the Court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict. (1) Charge to jury

(1) When a defendant in an indictment for murder asks for an instruction which is clearly law, the Court is bound to give it, although the same legal proposition may be substantially set out in another instruction given by the Court. At least, if such instruction is refused in presence of the jury, the Court must state it is only refused because already given, substantially, in another instruction.—People v. Bonds, 1 Nev., p. 33.

The Court cannot instruct the jury as to the existence or non-existence of a disputed fact. And where an instruction asked by defendant assumes the existence of a fact not admitted by the prosecution, the Court should refuse to give it in that form.—Id.

It is error in the Court to inform the jury, or to say in their presence, that the argument of counsel in regard to facts in a case is not tenable—that there is no evidence to support the hypothesis of counsel. The weight of evidence and its effect in proving secondary facts is to be determined by the jury.—Id.

The Court cannot give any instruction verbally unless the prisoner assents, and that assent must appear affirmatively.—Id.

Instructions which are filed with the indorsement of the Judge thereon as to his action in giving or refusing them are a part of the record, and the action of the Court thereon may be reviewed without any formal bill of exceptions.—People v. Gleason, 1 Nev., p. 173.

An instruction that the jury shall only consider the good character of the defendant when they have a reasonable doubt of his guilt, is not an erroneous instruction. It does not preclude them from considering the character of defendant in arriving at that state of doubt, but only amounts to an instruction that they must not acquit one clearly guilty because of his good character.—Id.

It was not error in the Court below, after defining involuntary manslaughter, to add: "The drawing of a deadly weapon, in a rude, angry, and threatening manner, not in necessary self-defense, is an unlawful act within the meaning of our statute."

To convict one on trial for murder, it is necessary not only to prove the prisoner committed the offense charged, but committed it within the territorial jurisdiction of the Court and grand jury where the indictment is found. The defendant, under all circumstances, is entitled to an instruction embodying this principle of law.—Id.

In a trial for murder, the good character of the defendant may be proved to explain the motive when the fact of the killing is not denied.—Id.

When a Judge gives an instruction to the jury on any point which is clear and intelligible, we do not think he is bound to repeat it in language of counsel, which is substantially the same but less clear, and therefore liable to be misunderstood.—Nevada v. Waterman, 1 Nev., p. 543.

A certain instruction commented on and construed. The instruction not entirely free from ambiguity, yet, if properly construed, it contains the true rule of law.—Id.

The statute which requires the charge or instructions of the Court to be in writing, is not violated by the Judge telling the jury that he could not instruct them as to matters of fact.—Id.

When the Court refuses to give an instruction containing a correct legal principle, and there is nothing in the transcript to show whether it was or was not applicable to the case in which it was asked, we may presume the refusal was on the ground that it was not applicable to the case on trial.—Id.

So, too, if the Court give an instruction which is wrong in regard to a mere abstract principle, which the record affirmatively shows had no application to the case on trial, this will not be held error.—Id.

But if the Court, on its own motion, gives an instruction which is clearly erroneous, it would be going very far for this

Court to presume that the Court below was giving instructions on mere abstract principles having no connection with the case on trial.—Id.

In this case the recitals of the Judge in the instructions given, and other proceedings, we think, affirmatively show the defense of alibi was set up, and defendant was entitled to proper instructions on that head.—Id.

When an instruction is asked and refused, which contains a correct principle of law, but there is nothing in the record showing its applicability to the case on trial, this Court cannot reverse the judgment. The refusal may have been on the ground that there was nothing in the testimony making the instruction applicable to the case.—State v. Squaires, 2 Nev., p. 226.

One may be principal in the crime of arson who does not himself apply the torch; if he be present aiding and abetting, he is a principal. An instruction which assumes that the defendant could only be principal if he himself set the fire is erroneous, and should not be given.—Id.

When two parties are jointly indicted, but are tried separately, the acts and declarations of one cannot be given in evidence against the other, until some complicity has been shown between the two. And where such evidence was given, the defendant on trial was entitled to an instruction in the following language: "In considering this cause the jury must discard and disregard the conduct and sayings of O'Neil, unless the evidence shows beyond a reasonable doubt that the defendant had previously conspired to inflict an injury on the deceased, or to commit a public offense in the prosecution of which the deceased was slain."—State v. McNamara, 3 Nev., p. 71.

When a Court approves an instruction asked, and intends to give it, but by some oversight neglects so to do, it is just as injurious to defendant as if positively refused; and if the instruction is important, entitles the defendant to a new trial.—Id.

Under our statute it is not necessary that the defendant should except to the action of the Court, in failing to give an instruction asked for.—Id.

It is not error to charge a jury that they must find the prisoner guilty of murder in the first or second degree, or acquit, where there is no testimony offered which in any degree tends to show any fact or circumstances which could reduce the offense to manslaughter.—State v. Millain, 3 Nev., p. 410.

A charge in the following language, if not correct, is too favorable to defendant: "If you believe from the evidence, that about the nineteenth day of January last, at Virginia, Storey County, the defendant, with malice aforethought, either expressed or implied, and with deliberation and premeditation, did unlawfully kill Julia Bulette with intent to take her life, it will constitute murder of the first degree, and you shall so find; otherwise you will acquit."—Id.

Where there is no testimony tending to show the defendant guilty of an offense of a lower grade than the one charged, it is not error to instruct the jury they must find the prisoner guilty as charged or acquit him. If, however, there is any testimony tending to reduce the offense to a lower grade, the whole question should be submitted to the jury.—Id.

Dissenting opinion, per LEWIS, J.:

It is error for a Judge to give his opinion to the jury as to the weight or sufficiency of testimony. In a trial for murder a Judge should not give it as his opinion to the jury that they should find the prisoner guilty of murder in the first degree or acquit. The grade of the offense is a question of fact which should be left entirely to the jury.—Id.

When a killing has been shown, the presumption arises that a murder has been committed. But there is no presumption that it is murder in the first degree in a case of this kind. If the defendant claims that it is only manslaughter, the proof devolves on him to show the circumstances, thus reducing the grade of offense. If the prosecution claims that it is murder in the first degree, it devolves upon the State to show the aggravating facts.—Id.

An instruction in the following language is erroneous: "The testimony in this case tends to show the property of the deceased, or some portion of the same, in the possession of the defendant at a time subsequent to the alleged murder, and at quite a recent date." This instruction assumes that the property found was or had been the property of deceased. The expression "tends to prove" only applies to the tendency of the evidence to show when the property was found, but does not apply to questions of ownership.—Id.

AMBIGUOUS INSTRUCTIONS.—It is no error to refuse an ambiguous instruction calculated to mislead, and particularly when the Court has already given one on the same point, which was clear, explicit, and not open to objection.—State v. Anderson, 4 Nev., p. 265.

FALSE DEFINITION OF MURDER.—An instruction in a murder case, that in order to constitute the crime of murder there must be a willful, deliberate, premeditated, and malicious intention to take human life: *Held*, to give a false definition of murder, and properly refused.—Id.

INSTRUCTIONS ON POINTS ALREADY CHARGED.—Though it might in many cases in murder trials be just and humane in Courts to point out defects existing in instructions asked by defendant and allow them to be corrected, yet, when it is sought to get instructions on points upon which the Court has already instructed the jury, it will be justified in refusing every one which is not technically correct.—Id.

CONSTITUTIONAL PROVISION AS TO CHARGING JURIES.—The constitutional provision that "Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law," was intended to prevent Judges from charging that facts testified to are not established, but was not intended to prevent, and does not prevent, them from charging what would be the legal effect of facts if found to be established.—Id.

INTENT TO MURDER—USE OF DEADLY WEAPONS.—An intent to murder cannot be conclusively inferred from the mere use of a deadly weapon, and an instruction to the jury to that effect in a murder trial is error.—State v. Newton, 4 Nev., p. 410.

BURDEN OF PROOF IN MURDER CASES.—It is no error to refuse an instruction in a murder case, which is in conflict with the principle that after the killing has been satisfactorily established the burden of proof to reduce the crime from murder to manslaughter is on the defendant.—State v. Anderson, 4 Nev., p. 265.

SLIGHT ASSAULT NO EXCUSE FOR HOMICIDE.—An instruction asked by defendant in a murder case that, if the jury should find that immediately previous to the killing deceased had assaulted the defendant, they should find defendant guilty of manslaughter: *Held*, properly refused, because a mere slight assault, such as the touch of a finger, or the laying of a hand on the coat, would not be sufficient to reduce a homicide from murder to manslaughter.—Id.

PREVIOUS DIFFICULTIES WITH OTHER PERSONS IN MURDER CASES.—On a trial for murder, evidence was offered that the defendant had been in difficulties with other persons than deceased, and was in a state of mental excitement just prior to the killing, and that he procured and carried the pistol with which the killing was done on account of those other difficulties, it being admitted that deceased had no connection with such other difficulties, and that defendant did not procure or carry the pistol with any design of using it against deceased: *Held*, irrelevant, and properly refused.—Id.

INSTRUCTIONS NOT APPLICABLE TO CASE.—It is no error to refuse an instruction which is correct, abstractly considered, when it is not applicable to the circumstances of the case.—State v. Ah Loi, 5 Nev., p. 99.

CHARGES TENDING TO MISLEAD JURY IN CRIMINAL TRIALS.—Any ambiguity in the charge in a criminal case which may have a tendency to mislead the jury, should entitle the accused to a new trial; for every person charged with a public offense has the right to have the evidence weighed by the jury, uninfluenced by the opinion of the Judge respecting it—in all respects to have a fair and impartial trial, free from every prejudicial irregularity, and from everything which may so involve the case as to render it difficult or impossible for the jury to arrive at an intelligent conclusion.—State v. McGinnis, 5 Nev., p. 337.

DEGREE OF PROOF TO REBUT PRESUMPTION OF MURDER.—A charge to a jury in a murder case that, if the intentional killing is established beyond a reasonable doubt, and the proof of the killing does not manifest that the crime amounted only to manslaughter, or was justifiable or excusable homicide, the burden of proving circumstances in mitigation, justification, or excuse, would devolve upon the defendant; and that "this burden being cast upon the defendant, it is not sufficient for him to raise a reasonable doubt in the minds of the jury whether or not such circumstances exist, but it is necessary for him to establish to your satisfaction, by preponderating proof, that there are circumstances to mitigate, justify, or excuse the homicide:" *Held*, error.—State v. McClure, 5 Nev., p. 132.

ACCUSED PERSONS ENTITLED TO THE BENEFIT OF REASONABLE DOUBT, HOWEVER ARISING.—In criminal prosecutions the guilt of the accused must be proved beyond a reasonable doubt; but if such doubt be raised, it makes no difference whether it be raised by the evidence for the prosecution or by that for the defendant.—Id.

PROOF REQUIRED TO SUSTAIN DEFENSE IN MURDER CASES.—Where a voluntary homicide is proved by the State, and its testimony shows no circumstances of mitigation, excuse, or justification, the burden of establishing such mitigation, excuse, or justification devolves upon the defendant; but he is not required to establish the facts constituting his defense, either by proof beyond a reasonable doubt or by proof preponderating over or outweighing that on the part of the prosecution.—Id.

State v. Waterman, 1 Nev., p. 543, in so far as it expresses an opinion that the rule there held, to the effect that a defendant in a prosecution for robbery is not required to produce preponderating proof to establish the facts of his defense, does not apply in cases of homicide, disapproved.—Id.

MURDER—THREATS—FAILURE TO CONNECT PROOF ADMITTED ON CONDITION.—In a trial for murder, evidence being offered to prove that a half hour before the killing the defendant had said that "a d—d puppy had been talking about his wife, and he was going to put a stop to it," was admitted against defendant's objection, on the undertaking of the District Attorney to show, by further testimony, that the defendant referred to the deceased; but no such further proof being made, nor any ruling excluding the evidence, and the prisoner being convicted of murder in the first degree: *Held*, that the testimony, under the circumstances, was improper, was calculated to prejudice defendant, and, in the absence of a proper instruction, was good cause for reversal of the judgment.—State v. Walsh, 5 Nev., p. 315.

USE OF EXPRESSION "GUILT OF DEFENDANT" IN CRIMINAL CHARGE.—Where, in a criminal case, the Court, in charging the jury, said "the guilt of the defendant rests upon circumstantial evidence:" *Held*, that, although evidently what was intended to be said was that the charge of guilt rested on circumstantial evidence, yet the words expressed a totally different meaning, and constituted fatal error.—State v. Duffy, 6 Nev., p. 138.

CRIMINAL LAW — CHARGE — ASSUMPTION OF GUILT.—Where, in charging the jury in a criminal case, the Court used the expression, "the guilt of the defendant rests upon what is known as circumstantial evidence:" *Held*, that there was a direct assumption of the guilt of defendant, and therefore manifest error.—Id.

CHARGING JURY IN RESPECT TO FACTS.—The assumption by a Judge, in his charge in a criminal case, that any material fact upon which there is any conflict of evidence is proved, is error.—Id.

CONSTITUTIONAL LAW—JUDGES NOT TO CHARGE AS TO FACTS.—The provisions of the Constitution, Art. VI, Sec. 12, that "Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law," whether it may be wise and wholesome or not, must be fully enforced, both in letter and spirit.—Id.

INSTRUCTION TO JURY NOT TO FIND HIGHER GRADE OF CRIME.—On a murder trial, the Judge instructed the jury that under the law and evidence it would not be justified in finding a verdict for any higher grade of offense than manslaughter: *Held*, on appeal by defendant, not necessarily a charge that the State had made out a case of manslaughter.—State v. Little, 6 Nev., p. 281.

CRIMINAL LAW — CHARGE IN DEFENDANT'S FAVOR.—Where a jury in a murder case was charged that it would not be justified under the law and evidence, in finding a verdict for any higher grade of offense than manslaughter: *Held*, that though the instruction (which was authorized by section three hundred and seventy-six of the Criminal Practice Act) might be repugnant to the constitutional clause against charging as to matters of fact, yet it was not to defendant's prejudice, and he could not complain.—Id.

EVIDENCE OF GOOD CHARACTER IN CRIMINAL CASES. An instruction in a criminal case to the effect that evidence of good character is proper in all criminal cases, and that in doubtful cases it frequently becomes material, and is sufficient to turn the scale in favor of the accused; and that, should the jury be in doubt as to the facts or guilt of defendant, it might give evidence of previous good character such weight as to acquit: *Held*, to be entirely too broad, and properly refused. State v. McGinnis, 6 Nev., p. 109.

"INDEPENDENT AND POSITIVE EVIDENCE" AS TO CRIMINAL INTENT.—An instruction in a criminal case to the effect that the intention of the accused at the time of the act done, is the principal fact upon which defendant's guilt, as charged, depends; and that it is the duty of the State to establish by positive evidence the intention of the accused, so as to leave nothing to be inferred from the other facts of the case with regard to the intention; and that if the State failed to give such independent and positive evidence of intention the jury should acquit: *Held*, erroneous and properly refused.—Id.

PROOF OF CRIMINAL INTENT.—Criminal intent can only be proven as a deduction from declarations or acts; when the acts are established, the natural and logical deduction is that defendant intended to do what he did do, and if he offers no excuse or palliation of the act done, such deduction becomes conclusive.—Id.

ERRONEOUS ALLEGATION OF PERSON INJURED.—An instruction in a forgery case, that "when an offense involves the commission, or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material:" *Held*, to be simply a recital of the statutory provisions upon the subject (Stats. 1861, p. 460, Sec. 240), and proper under circumstances calling for an instruction upon the point.—State v. Cleveland, 6 Nev., p. 181.

CHARGING CIRCUMSTANTIAL TO BE SUPERIOR TO DIRECT EVIDENCE, ERROR.—Where the Court in a criminal case instructed the jury that "circumstantial evidence is more satisfactory than the testimony of a single individual, who swears he has seen a fact committed:" *Held*, error.—State v. Van Winkle, 6 Nev., p. 340.

Charge to jury.

2011. SEC. 387. Either party may present to the Court any written charge, and request that it may be given. If the Court think it correct and pertinent, it shall be given; if not, it shall be refused.

Same.

2012. SEC. 388. Upon each charge so presented and given, or refused, the Court shall indorse its decision, and shall sign it. If part be given and part refused, the Court shall distinguish, showing by the indorsement what part of the charge was given and what part refused.

How jury to decide after charge.

2013. SEC. 389. After hearing the charge, the jury may either decide in Court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not permit any person to speak to them, nor to speak to them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into Court when they have so agreed.

Defendant on bail may be committed.

2014. SEC. 390. Where a defendant, having given bail, appears for trial, the Court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the Court, and he shall be committed and held in custody accordingly.

Room to be provided.

2015. SEC. 391. A room shall be provided by the Sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery, unless the same have been already furnished by the county. The Court may order the Sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the Court, shall be a county charge.

Provision for jury while deliberating.

2016. SEC. 392. While the jury are kept together, either during the progress of the trial, or after their retirement for deliberation, they shall be provided by the Sheriff, at the expense of the county, with suitable and sufficient food and lodging.

Papers which they may take.

2017. SEC. 393. Upon retiring for deliberation the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the Court, to be taken from the person having them in possession, and also the instructions of the Court.

Same.

2018. SEC. 394. The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

Jury may be brought into Court for instructions

2019. SEC. 395. After the jury have retired for deliberation, if there be any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into Court. Upon their being brought into Court, the information required shall be given in the presence of, or after notice to, the District Attorney and the defendant or his counsel.

When jury may be discharged after returning.

2020. SEC. 396. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Same.

2021. SEC. 397. Except as provided in the last section, the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open Court, unless by the consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the Court shall deem proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

Effect of discharge without verdict.

2022. SEC. 398. In all cases where a jury are discharged or prevented from giving a verdict by reason of any accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

Adjournment during absence of jury.

2024. SEC. 399. While the jury are absent, the Court may adjourn from time to time, as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

Final adjournment discharges.

2025. SEC. 400. A final adjournment of the Court discharges the jury.

Expenses of two or more counties for judicial purposes.

2026. SEC. 401. When two or more counties are joined for judicial purposes, the expenses accruing from the trial of cases shall be assigned to the county in which the offense was committed for which trial was had.

2027. SEC. 402. When the jury have agreed upon their verdict, they must be conducted into Court by the officer having

Verdict, how delivered.

them in charge. Their names must then be called, and if all do not appear, the rest shall be discharged without giving a verdict. In such a case, the cause must be again tried at the same or another term.

When defendant must appear.

2028. Sec. 403. If the indictment be for a felony, the defendant must, before a verdict, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

Jury to be asked if they agree.

2029. Sec. 404. If the jury appear, they shall be asked by the Court or the Clerk whether they have agreed upon a verdict, and if the foreman answer in the affirmative, they shall, on being required, declare the same.

General or special verdict.

2030. Sec. 405. The jury may either render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

General verdict, import of.

2031. Sec. 406. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant." (1)

(1) The Court may always suggest to the jury a correction of their verdict as to form. The correction in this case was merely formal. Even if there had been a substantial difference, the new verdict was drawn by the foreman of the jury and assented to by the full panel, and we see no reason why it should not be a good verdict.—Nevada v. Waterman, 1 Nev., p. 543.

A verdict of acquittal on a good indictment puts an end to all further prosecution for the offense charged in that indictment, notwithstanding any errors that may have been committed during the progress of the trial.—State v. Hall, 3 Nev., p. 172.

A defendant tried on a criminal charge and found not guilty by a jury cannot again be put on trial for the same offense.—State v. Herrick, 3 Nev., p. 259.

IMPORT OF VERDICT OF "GUILTY."—In a prosecution for an assault with a deadly weapon with intent to inflict upon the person of another bodily injury, properly charged, a verdict of "guilty" is in effect (Criminal Practice Act, Sec. —,) a verdict of guilty as charged in the indictment.—State v. Lawry, 4 Nev., p. 161.

Special verdict.

2032. Sec. 407. A special verdict is that by which the jury find the facts only, leaving the judgment to the Court. It must present the conclusions of fact as established by evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the Court but to draw conclusions of law upon them.

Verdict reduced to writing.

2033. Sec. 408. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the Court, read to the jury, and agreed to by them before they are discharged.

Form of.

2034. SEC. 409. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury.

Judgment on, how given.

2035. SEC. 410. The Court shall give judgment upon the special verdict, as follows: First—If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted, as provided in section four hundred and twelve, under that indictment, judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offense charged, or of any offense of which he could be so convicted under the indictment, judgment of acquittal shall be given. Second—If the plea be a former conviction or acquittal of the same offense, the Court shall give judgment of acquittal or conviction, according as the facts prove or fail to prove the former conviction or acquittal.

New trial, when ordered.

2036. SEC. 411. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the Court to give judgment, or if they find the evidence of facts merely, and not the conclusions of facts from the evidence as established to their satisfaction, the Court shall order a new trial.

Defendant may be found guilty of any offense.

2037. SEC. 412. In all cases the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense charged.

Verdict may be rendered as to some defendants.

2038. SEC. 413. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the case as to the rest may be tried by another jury.

Verdict, when to be reconsidered.

2039. SEC. 414. When there is a verdict of conviction, in which it appears to the Court that the jury have mistaken the law, the Court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after such reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the Court cannot require the jury to reconsider it.

Same.

2040. SEC. 415. If the jury render a verdict which is neither a general nor a special verdict, as defined in sections four hundred and six and four hundred and seven, the Court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the Court.

Persistence of jury in formality to work acquittal.

2041. SEC. 416. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it shall be entered in the terms in which it is found, and the Court shall give judgment of acquittal. But no judgment of conviction can be given unless the jury find expressly against the defendant upon the issue, or judgment be given against him on a special verdict.

Jury may be polled. 2042. SEC. 417. When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party, in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative, the jury shall be sent out for further deliberation.

Verdict to be recorded. 2043. SEC. 418. When the verdict is given, and is such as the Court may receive, the Clerk must immediately record it in full on the minutes, and must read it to the jury and inquire of them whether it be their verdict. If any juror disagree, the fact must be entered in the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

Proceedings on verdict of acquittal. 2044. SEC. 419. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the verdict is given, except that where the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the Court may order his detention, to the end that a new indictment may be preferred in the same manner and with like effect as provided in sections three hundred and seventy-four and three hundred and seventy-five.

Proceedings on verdict of guilty. 2045. SEC. 420. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officers of the county, to await the judgment of the Court upon the verdict. If so committed, his bail shall be exonerated, or if money be deposited instead of bail, it shall be refunded to the defendant.

7.—*Proceedings after trial and before judgment.*

Bill of exceptions by defendant. 2046. SEC. 421. On the trial of an indictment, exceptions may be taken by the defendant to a decision of the Court upon a matter of law in any of the following cases: First—In disallowing a challenge to the panel of the jury, or to an individual juror, for implied bias. Second—In admitting or rejecting witnesses or testimony, or in charging the triers of a challenge to a juror for actual bias. Third—In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

Same, on behalf of people. 2047. SEC. 422. The exceptions may be taken by the District Attorney, or other counsel for the people, to a decision of the Court upon a matter of law in any of the cases specified in the third subdivision of the preceding section.

When and how settled 2048. SEC. 423. A bill containing the exceptions must be settled and signed by the Judge, and filed with the Clerk within ten days after the trial of the cause, unless further time be granted by said Judge, or by a Judge of the Supreme Court. (1)

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(1) The time prescribed by the Practice Act within which a bill of exceptions in a criminal case is to be signed by the Judge, is merely directory.—State v. Salge, 1 Nev., p. 456.

2049. SEC. 424. The bill of exceptions shall contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken, and the Judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material to the questions to be raised. What to contain.

2050. SEC. 425. The bill of exceptions must be filed with the Clerk of the Court as soon as it is signed by the Judge. When to be filed.

2051. SEC. 426. When any written charge has been presented and given, or refused, the question or questions presented in such charge need not be excepted to, nor embodied in a bill of exceptions, but the written charge itself, with the indorsement showing the action of the Court, shall form part of the record, and any error in the decision of the Court thereon may be taken advantage of on appeal in like manner as if presented in a bill of exceptions. Written charges form part of record.

2052. SEC. 427. A new trial is a reëxamination of the issue in the same Court before another jury, after a verdict has been given. It places the parties in the same condition as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument. New trial, effect of.

2053. SEC. 428. The Court in which a trial is had upon the issue of fact, has power to grant a new trial where a verdict has been rendered against the defendant upon his application, in the following cases only: When Court has power to grant new trial.

First—When the trial has been had in his absence, if the indictment be for felony. (1)

Second—When the jury has received any evidence out of Court other than that resulting from a view, as provided in section three hundred and seventy-seven.

Third—When the jury has separated without leave of the Court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case.

Fourth—When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

Fifth—When the Court has misdirected the jury in a matter of law.

Sixth—When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone. [As amended Feb. 20, Stats. 1869, p. 67.]

(1) AFFIDAVIT FOR NEW TRIAL IN CRIMINAL CASES.—The first, second, third, and fourth grounds for new trial in criminal cases, under Sec. 428 of the Criminal Practice Act, may be presented simply by affidavit, without either statement or bill of exceptions.—State v. Stanley, 4 Nev., p. 71.

EXCEPTIONS TO CHARGE IN CRIMINAL CASES.—Under Sec. 426 of the Criminal Practice Act, the written charge and instructions of the Court to the jury are deemed excepted to, and any questions made upon them may be reviewed on motion for new trial, without a formal bill of exceptions.—Id.

When application to be made. 2054. SEC. 429. The application for a new trial must be made before the judgment is entered in the cause.

Motion in arrest of judgment. 2055. SEC. 430. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or a verdict against the defendant, on a plea of a former conviction or acquittal. On what founded. It may be founded on any of the defects in the indictments mentioned in section two hundred and eighty-six.

Judgment arrested. 2056. SEC. 431. The Court may also, on its own view of any of these defects, arrest the judgment without motion.

When motion made. 2057. SEC. 432. The motion must be made before or at the time when the defendant is called for judgment.

Effect of allowing motion. 2058. SEC. 433. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Proceedings after judgment has been arrested. 2059. SEC. 434. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the Court may order him to be recommitted to the officers of the proper county, or admitted to bail anew to answer the new indictment. If the evidence show him guilty of another offense, he shall be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appear sufficient to charge him with any offense, he shall, if in custody, be discharged; or, if admitted to bail, his bail shall be exonerated; or, if money have been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

8.—*Judgment and execution.*

Time for pronouncing. 2060. SEC. 435. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the Court shall appoint a time for pronouncing judgment.

What time to be appointed. 2061. SEC. 436. The time appointed shall be at least two days after the verdict, if the Court intend to remain in session so long; or, if not, as remote a time as can reasonably be allowed. But in no case shall the judgment be rendered in less than six hours after the verdict.

Presence of defendant, when necessary. 2062. SEC. 437. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for misdemeanor, judgment may be pronounced in his absence.

Defendant to be brought into Court. 2063. SEC. 438. When the defendant is convicted of a felony, if he be in custody, the Court may direct the officer in whose custody he is to bring him before it for judgment, and the officer shall do so accordingly.

Defendant out on bail failing to appear. 2064. SEC. 439. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the Court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest. Bench warrant.

2065. SEC. 440. The Clerk, on the application of the District Attorney, may, accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant into one or more counties. Warrant may be issued to several counties.

2066. SEC. 441. The bench warrant shall be substantially in the following form:

"COUNTY OF ——.

"The people of the United States of the Territory of Nevada, to any Sheriff, Constable, Marshal, or policeman in this Territory: A. B. having been on the —— day of ——, A. D. 18—, duly convicted in the District Court of the District of ——, of the crime of [designating it generally]; you are therefore commanded forthwith to arrest the above named A. B. and bring him before that Court for judgment, or if the Court have adjourned for the term, that you deliver him into the custody of the Sheriff of the County of ——. Form of.

"Given under my hand, with the seal of said Court affixed, this the —— day of ——, A. D. 18—. [SEAL.]

"By order of the Court.

"E. F., Clerk."

2067. SEC. 442. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by a magistrate of that county. How served.

2068. SEC. 443. Whether the bench warrant be served in the county in which it was issued, or in another county, the officer shall arrest the defendant and bring him before the Court, or commit him to the officer mentioned in the warrant, according to the command thereof. Arrest of defendant.

2069. SEC. 444. When the defendant appears for judgment, he shall be informed by the Court, or by the Clerk under its direction, of the nature of the indictment, and of his plea, and the verdict, if any there are, and shall be asked whether he have any legal cause to show why judgment should not be pronounced against him. Proceedings when defendant appears.

2070. SEC. 445. He may show, for cause against the judgment: First—That he is insane; and if, in the opinion of the Court, there be reasonable grounds for believing him to be insane, the question of his insanity shall be tried, as provided in sections five hundred and seventy-two to five hundred and seventy-five, both inclusive. If, upon the trial of that question, the jury find that he is of sound mind, judgment shall be pronounced; but, if they find him insane, he shall be committed to the custody of some proper and suitable person until he become sane, and when notice is given of that fact, as provided in section five hundred and seventy-nine, he shall be brought before the Court for judgment. Second—That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the Court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial. Causes against judgment.

Rendition of judgment.

2071. SEC. 446. If no sufficient cause be alleged or appear to the Court why judgment should not be pronounced, it shall thereupon be rendered. (1)

(1) A judgment in a criminal case, showing the parties thereto, the Court in which it was rendered, directing the term of imprisonment, the prison in which defendant is to be confined, and reciting the offense for which the prisoner is to be punished, is all the statute requires.—Ex Parte Salge, 1 Nev., p. 449.

A certificate of a Clerk, showing that the judgment or sentence entered in the minutes of the Court is different from that which was orally delivered by the Judge, proves nothing. The law does not authorize the Clerk to certify what the Judge may have said. He can only certify to the records in his Court.—Id.

If a Judge, in passing sentence on a criminal, fails to recite all the facts that should be recited in the judgment, but the Clerk enters up the judgment on the minutes of the Court in due form, and with the recitals required by law, that becomes the judgment of the Court. It is proper for the Clerk to put the judgment in form, and the adoption of the judgment by the Court make it a part of the record.—Id.

Defective sentence of execution, whether sufficiently specific to justify the Sheriff. *Query?*—Ex Parte James, 1 Nev., p. 319.

Judgment when defendant found guilty of two or more offenses.

2072. SEC. 447. If the defendant have been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

Judgment to pay fine may order imprisonment.

2073. SEC. 448. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every two dollars of the fine, or in that proportion.

Lien of such judgment.

2074. SEC. 449. A judgment that the defendant shall pay a fine shall constitute a lien in like manner as a judgment for money rendered in a civil action.

Entry of judgment.

Record, how constituted.

2075. SEC. 450. When judgment upon a conviction is rendered, the Clerk shall enter the same in the minutes, stating briefly the offense for which the conviction has been had, and shall, within five days, annex together and file the following papers, which shall constitute the record of the action: First—A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury, or to any individual grand juror, and the proceedings thereon. Second—The indictment and a copy of the minutes of the plea of, or demurrer. Third—A copy of the minutes of any challenge which may have interposed to the panel of the trial jury, or an individual juror, and the proceedings thereon. Fourth—A copy of the minutes of the trial. Fifth—A copy of the minutes of the judgment. Sixth—The bill of exceptions, if there be one. Seventh—The written charges asked of the Court, if there be any.

Authority for execution.

2076. SEC. 451. When a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered. (1)

(1) Whilst our statute authorizes ministerial officers to carry into effect the judgments of criminal Courts in all cases where the punishment is less than death, upon receipt of a certified copy of the judgment or sentence, thus dispensing with the necessity of a regular warrant for execution, still it does not prevent the officer from proceeding to execution of the judgment upon receipt of a formal warrant reciting the judgment of the Court, and requiring the officer to execute that judgment.—Ex Parte Smith, 2 Nev., p. 338.

The judgment in a criminal case recites that the prisoner was brought into Court, and plead guilty, "whereupon the Court sentenced the said Terence G. Smith," etc. Whether this record shows affirmatively that there was no interval of time between the plea of guilty and sentence: *Query?*—Id.

Execution on judgment for fine.

2077. SEC. 452. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action.

On judgment for imprisonment.

2078. SEC. 453. If the judgment be imprisonment, or a fine and imprisonment until it be satisfied, the defendant shall forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

On judgment of death.

2079. SEC. 454. When judgment of death is rendered, a warrant, signed by the Judge and attested by the Clerk, under the seal of the Court, shall be drawn and delivered to the Sheriff; it shall state the conviction and judgment, and appoint a day on which the judgment shall be executed, which shall not be more than sixty days from the time of the judgment.

Statement to be transmitted to Governor.

2080. SEC. 455. The Judge of the Court at which a conviction requiring judgment of death shall have been had, shall immediately after the conviction transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Governor may require opinion of Supreme Court.

2081. SEC. 456. The Governor may thereupon require the opinion of the Justices of the Supreme Court and the Attorney General, or any of them, upon the statement so furnished.

Suspension of judgment of death.

2082. SEC. 457. No Judge, Court, or officer other than the Governor, can suspend the execution of a judgment of death, except the Sheriff, as provided in the seven succeeding sections, unless an appeal be taken. When an appeal has been taken from a judgment of death, the appellate Court, and any Judge thereof in vacation, may suspend the execution until the appeal is heard and determined.

Inquiry into sanity of defendant.

2083. SEC. 458. If after judgment of death there be good reason to suppose that the defendant has become insane, the Sheriff of the county, with the concurrence of the Judge of the Court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the District Attorney.

Same. 2084. SEC. 459. The District Attorney shall attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by that Court.

Certificate of inquisition. 2085. SEC. 460. A certificate of the inquisition shall be signed by the jurors and the Sheriff, and filed with the Clerk of the Court in which the conviction was had.

Proceedings on such inquiry. 2086. SEC. 461. If it be found by the inquisition that the defendant is sane, the Sheriff shall execute the judgment; but if it be found that he is insane, the Sheriff shall suspend the execution of the judgment until he receive a warrant from the Governor, or from the Judge of the Court by which the judgment was rendered, directing the execution of the judgment.

Effect of finding. 2087. SEC. 462. If the inquisition find that the defendant is insane, the Sheriff shall immediately transmit the same to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Inquiry into pregnancy of female convict. 2088. SEC. 463. If there be good reason to suppose that a female, against whom a judgment of death is rendered, is pregnant, the Sheriff of the county, with the concurrence of the Judge of the Court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy; immediate notice thereof shall be given to the District Attorney, and the provisions of sections four hundred and fifty-nine and four hundred and sixty shall govern the proceedings upon the inquisition.

Effect of finding. 2089. SEC. 464. If it be found by the inquisition that such female is not pregnant, the Sheriff shall execute the judgment. If it be found that she is pregnant, the Sheriff shall suspend the execution of the judgment, and transmit the inquisition to the Governor.

Same. 2090. SEC. 465. When the Governor is satisfied that such female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

Proceedings when judgment not executed. 2091. SEC. 466. If for any reason a judgment of death shall not have been executed, and the same remain in force, the Court in which the conviction was had, on the application of the District Attorney, shall order the defendant to be brought before it, or if he be at large, a warrant for his apprehension may be issued.

Order for execution of judgment. 2092. SEC. 467. Upon the defendant being brought before the Court, it shall inquire into the facts, and if no legal reason exist against the execution of the judgment, shall make an order to the Sheriff of the proper county to execute the judgment at the time specified therein, and the Sheriff shall execute the judgment accordingly.

Death penalty, how inflicted. 2093. SEC. 468. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead.

9.—*Appeal.*

2094. SEC. 469. The party aggrieved in a criminal action, whether that party be the people or the defendant, may appeal as follows: First—To the Probate Court of the county from a final judgment of the Justice's Court. Second—To the Supreme Court from a final judgment of the District Court in all criminal cases. Also, from an order of the District Court allowing a demurrer granting or refusing a new trial. (1) To and from what Courts.

(1) An appeal in criminal cases may be taken from an order of the District Court allowing a demurrer, though final judgment be not entered.

An order of the District Court quashing an indictment, discharging the defendant, and exonerating his bail, is a final judgment from which an appeal may be taken.—Nevada v. Logan, 1 Nev., p. 510.

A judgment is final which completely disposes of the action. To make it final it is not necessary that the rights of the parties should be finally determined, or that it be upon the merits. It is final if it disposes of the particular suit in which it is rendered.—Id.

MANNER OF CARRYING UP ALLEGED ERRORS ON APPEAL. Alleged errors in a charge or instruction can only be brought to the attention of the Supreme Court in one of three ways: Either by being embodied in a bill of exceptions, or in a settled statement, or indorsed by the Judge as provided by Sec. 426 of the Practice Act; and unless presented in one of these ways the Supreme Court will not notice them.—State v. Darling, 4 Nev., p. 413.

2095. SEC. 470. The appeal to the Supreme Court from the District Court can be taken in questions of law alone. On questions of law alone.

2096. SEC. 471. The party appealing shall be known as the appellant, and the adverse party as the respondent. Parties on appeal, how designated.

2097. SEC. 472. Upon the appeal, any decision of the Court in an intermediate order or proceeding, forming a part of the record, may be reviewed. What may be reviewed.

2098. SEC. 473. An appeal must be taken within one year after the judgment was rendered. Time.

2099. SEC. 474. An appeal must be taken by the service of a notice in writing on the Clerk of the Court in which the action was tried, stating that appellant appeals from the judgment. Appeal, how taken.

2100. SEC. 475. If the appeal be taken by the defendant, a similar notice must be served on the District Attorney. Notice of, to District Attorney.

2101. SEC. 476. If it be taken by the people, a similar notice must be served upon the defendant, if he be a resident of the district; or if not, on the counsel, if any, who appear for him on trial, if he be living within the district. If such service, after due diligence, cannot be made, the appellate Court, upon proof thereof, shall make an order for the publication of the notice in some newspaper, and for such time as it may deem proper. Notice to defendant.

When deemed perfect.

2102. SEC. 477. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected.

Effect of appeal.

2103. SEC. 478. An appeal taken by the people shall in no case stay or affect the operation of a judgment in favor of the defendant.

Same.

2104. SEC. 479. No appeal from a judgment of conviction, unless it be one imposing a fine only, shall stay the execution of the judgment, but the defendant, if in custody, shall remain in custody to abide the judgment upon the appeal, unless admitted to bail, as prescribed in section five hundred and two.

Copy of record transmitted to Supreme Court.

2105. SEC. 480. Upon the appeal being taken, the Clerk with whom the notice of appeal is filed must, within ten days thereafter, without charge, transmit to the Clerk of the Supreme Court a copy of the notice of appeal, and of the record. (1)

(1) WHAT TRANSCRIPT ON APPEAL MUST SHOW.—On appeal from an order granting a new trial in a criminal case, where a reversal is urged on the ground that there was no statement or bill of exceptions in the Court below, the transcript must show affirmatively that there was no such statement or bill of exceptions.—State v. Stanley, 4 Nev., p. 71.

CERTIFICATE OF CLERK TO TRANSCRIPT.—The certificate of the Clerk to a transcript on appeal, that no statement or bill of exceptions on a motion for new trial had been filed in his office, is not sufficient evidence that none was presented to the Court below to authorize a reversal on that ground of an order granting a new trial.—Id.

THE SAME.—There is no law authorizing the review of the action of a lower Court upon the simple certificate of the Clerk as to how or upon what evidence it acted.—Id.

FILING BILL OF EXCEPTIONS FOR NEW TRIAL.—The failure to file a statement or bill of exceptions on motion for new trial in a criminal case would not justify a reversal of an order granting a new trial, the transcript not affirmatively showing that none was presented to the Court.—Id.

ERRORS NOT PROPERLY PRESENTED WILL NOT BE REGARDED.—Where a transcript on appeal in a criminal case contained no bill of exceptions and no statement either certified by the Judge or agreed to by the attorneys: *Held*, that there was nothing for the consideration of the appellate Court but the indictment, the minutes, and the instructions.—State v. Wilson, 5 Nev., p. 43.

CRIMINAL LAW—APPEAL—INSUFFICIENCY OF EVIDENCE. A judgment in a criminal case will not be disturbed by the Supreme Court on the ground of insufficiency of the evidence, if there be any evidence tending to prove the allegations of the indictment.—State v. McGinnis, 6 Nev., p. 109.

Dismissing appeal.

2106. SEC. 481. If the appeal be irregular in any substantial particular, but not otherwise, the appellate Court may, on any day in term, on motion of the respondent, upon five days' notice, with copies of the papers upon which the motion is founded, order the same to be dismissed.

Same. 2107. SEC 482. The Court may, also, upon like motion, dismiss the appeal, if the return be not made as provided in section four hundred and eighty, unless for good cause it enlarge the time for that purpose.

Argument of. 2108. SEC. 483. All appeals in criminal cases shall be tried and determined at the first term of the appellate Court after the record is filed.

Same. 2109. SEC. 484. Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear.

Same. 2110. SEC. 485. Upon the argument of the appeal, if the offense be punishable with death, two counsel shall be heard on each side, if they require it. In any other case the Court may, in its discretion, restrict the argument to one counsel on each side.

Appellate Court. 2111. SEC. 486. The defendant need not appear in the appellate Court.

Technical errors not to affect. 2112. SEC. 487. After hearing the appeal, the Court shall give judgment without regard to technical error or defect which do not affect the substantial rights of the parties.

Extent of judgment. 2113. SEC. 488. The appellate Court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

New trial, when had. 2114. SEC. 489. When a new trial is ordered, it must be directed to be had in the Court of the district from which the appeal was taken.

Proceedings on reversal of judgment. 2115. SEC. 490. If a judgment against the defendant be reversed, without ordering a new trial, the appellate Court shall direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

On affirmance. 2116. SEC. 491. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate Court shall direct.

Entry of judgment and copy. 2117. SEC. 492. When the judgment of the appellate Court is given, it shall be entered in the minutes, and a certified copy of the entry shall be forthwith remitted to the Clerk of the Court from which the appeal was taken.

Papers to remain in appellate Court. 2118. SEC. 493. The papers returned to the appellate Court shall there remain of record, and shall not be remitted to the Court below.

All further proceedings to be had in Court below. 2119. SEC. 494. After the certificate of judgment has been remitted, as provided in section four hundred and ninety-two, the appellate Court shall have no further jurisdiction of the appeal, or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the Court to which the certificate is remitted.

10.—*Bail.*

Bail defined. 2120. SEC. 495. Admission to bail is the order of a competent Court or magistrate that the defendant be discharged from actual custody upon the taking of bail.

Taking. 2121. SEC. 496. The taking of bail consists in the acceptance by a competent Court or magistrate, of the recognizance of sufficient bail for the appearance of the defendant, according to the terms of the recognizance, or that the bail will pay to the people of the United States of the Territory of Nevada a specified sum.

Admission to. 2122. SEC. 497. A person charged with an offense may be admitted to bail before conviction, as follows: First—As a matter of discretion in all cases where the punishment is death. Second—As a matter of right in all other cases.

When not admitted to 2123. SEC. 498. No person shall be admitted to bail where he is charged with an offense punishable with death, when the proof is evident or the presumption great.

In discretion, notice necessary. 2124. SEC. 499. When the admission to bail is a matter of discretion, the Court or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable to be given to the District Attorney of the county where the examination is had.

After conviction, when allowed. 2125. SEC. 500. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail: First—As a matter of right, where the appeal is from a judgment imposing a fine only. Second—As a matter of discretion in all other cases.

Before conviction. 2126. SEC. 501. Before conviction, a defendant may be admitted to bail: First—For his appearance before a magistrate, on the examination of the charge, before being held to answer. Second—To appear at the Court to which the magistrate is required, by section one hundred and seventy-three, to return the depositions and statement upon the defendant being held to answer after examination. Third—After indictment, either before the bench warrant issued for his arrest, or upon an order of the Court committing or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the Court in which it is found, or to which it may be sent or removed for trial.

On appeal. 2127. SEC. 502. After conviction, and upon an appeal, the defendant may be admitted to bail as follows: First—If the appeal be from a judgment imposing a fine only, or the recognizance of bail, that he will pay the same, or such part of it as the appellate Court may direct, if the judgment be affirmed or modified, or the appeal be dismissed. Second—If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

Held to answer, who may admit to. 2128. SEC. 503. When the defendant has been held to answer, as provided in section one hundred and sixty-one, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

How put in. Recognizance.

2129. SEC. 504. Bail is put in by a written recognizance, executed by two sufficient sureties (with or without the defendant, in the discretion of the Court or magistrate), and acknowledged before the Court or magistrate in substantially the following form: "An order having been made on the —— day of ——, A. D. 18—, by A. B., a Justice of the Peace of —— County (or as the case may be), that C. D. be held to answer upon a charge of [stating briefly the nature of the offense], upon which he has been duly admitted to bail in the sum of —— dollars, we, E. F. and G. H. [stating their place of residence], hereby undertake that the above named C. D. shall appear and answer the charge above mentioned, in whatever Court it may be prosecuted, and shall, at all times, render himself amenable to the orders and process of the Court, and, if convicted, shall appear for judgment and render himself in execution thereof, or, if he fail to perform either of these conditions, that we will pay to the State of Nevada the sum of —— dollars [inserting the sum in which the defendant is admitted to bail]."

Form of.

Qualifications of.

2130. SEC. 505. The qualifications of bail are as follows: First—Each of them must be a resident, and a householder or freeholder within the Territory; but the Court or magistrate may refuse to accept any person as a bail who is not a resident of the district where the bail is offered. Second—They must each be worth the amount specified in the recognizance, exclusive of property exempt from execution; but the Court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

Justification of.

2131. SEC. 506. The bail shall, in all cases, justify by affidavit, taken before the Court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section five hundred and five.

Same.

2132. SEC. 507. The Court or magistrate may thereupon further examine the bail, upon oath, concerning their sufficiency, in such manner as the Court or magistrate may deem proper.

On indictment before conviction.

2133. SEC. 508. When the offense charged in the indictment is not capital, the officer serving the bench warrant shall, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail, as prescribed in sections two hundred and sixty-two and two hundred and sixty-five.

When delivered into custody.

2134. SEC. 509. If the offense charged in this indictment be capital, the officer arresting the defendant shall deliver him into custody, according to the command of the bench warrant, as prescribed in section two hundred and sixty.

To be held by Sheriff.

2135. SEC. 510. When the defendant is so delivered into custody, he shall be held by the Sheriff, unless admitted to bail on examination, upon a writ of habeas corpus.

Bail, how put in.

2136. SEC. 511. The bail must be put in by a written recognizance, executed by two sufficient sureties (with or without the defendant, in the discretion of the Court or magistrate), and acknowledged before the Court or magistrate, in substantially the following form:

Recognizance, form of.

"An indictment having been found, on the —— day of ——, A. D. eighteen hundred and ——, in the Court of the District of —— (as the case may be), charging A. B. with the crime of [designating it generally], and he having been duly admitted to bail in the sum of —— dollars, we, C. D. and E. F. [stating their place of residence], hereby undertake that the above named A. B. shall appear and answer the indictment above mentioned, in whatever Court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the Court, and, if convicted, shall appear for judgment and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the State of Nevada the sum of —— dollars [inserting the sum in which the defendant is admitted to bail]."

Qualifications and justifications of.

2137. SEC. 512. The provisions contained in sections five hundred and five and five hundred and seven, both inclusive, in relation to bail, shall apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail, and incident thereto.

Bail on appeal, order for.

2138. SEC. 513. In the cases in which the defendant may be admitted to bail, upon an appeal, as provided in section five hundred, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus.

Notice of application for.

2139. SEC. 514. When the admission to bail is a matter of discretion, the Court or officer by whom it may be ordered shall require such notice of the application therefor as he may deem reasonable to be given to the District Attorney of the county in which the verdict or judgment was originally rendered.

Qualification and recognizance.

2140. SEC. 515. The bail must possess the qualifications, and must be put in in all respects as above provided, except that the condition of the recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate Court upon the appeal.

Deposit in lieu of bail.

2141. SEC. 516. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the Clerk of the Court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he shall be discharged from custody.

May deposit in exoneration of bail.

2142. SEC. 517. If the defendant have given bail, he may, at any time before the forfeiture of the recognizance, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made, the bail shall be exonerated.

How deposit applied.

2143. SEC. 518. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the Clerk shall, under the direction of the Court, apply the money in satisfaction thereof, and after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

How bail may surrender the defendant and be exonerated

2144. SEC. 519. At any time before the forfeiture of their recognizance, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

Same.

2145. SEC. 520. A certified copy of the recognizance of bail shall be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and shall, by a certificate in writing, acknowledge the surrender. Second—Upon a recognizance and a certificate of the officer, the Court in which the action is pending may, upon notice of five days to the District Attorney of the district, with a copy of the recognizance and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they shall be exonerated accordingly.

Bail may arrest defendant.

2146. SEC. 521. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the State, may themselves arrest him, or by a written authority, indorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

Surrender after deposit.

2147. SEC. 522. If money have been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the Court shall order a return of the deposit to the defendant, upon producing the certificate to the officer, showing the surrender, and upon a notice of five days to the District Attorney, with a copy of the certificate.

When recognizance or deposit forfeited.

2148. SEC. 523. If without sufficient excuse the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion, when his presence in Court may be lawfully required, or to surrender himself in execution of the judgment, the Court shall direct the fact to be entered upon its minutes, and the recognizance, or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

Discharge of forfeiture.

2149. SEC. 524. If at any time before the final adjournment of the Court, the defendant appear and satisfactorily excuse his neglect, the Court may direct the forfeiture of the recognizance or the deposit to be discharged upon such terms as may be just.

Action on recognizance.

2150. SEC. 525. If the forfeiture be not discharged as provided in the last section, the District Attorney may, at any time after the adjournment of the Court, proceed by action only against the bail upon their recognizance.

Payment of deposit to County Treasurer.

2151. SEC. 526. If by reason of the neglect of the defendant to appear, as provided in section five hundred and twenty-three, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in section five hundred and twenty-four, the Clerk with whom it is deposited shall immediately after the final adjournment of the Court pay over the money deposited to the County Treasurer.

When defendant may be recommitted after bail.

2152. SEC. 527. The Court to which the committing magistrate shall return the depositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases: First, when, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section five hundred and twenty-three; second, when it satisfactorily appears to the Court that his bail, or either of them, are dead, or insufficient, or have removed from the State; third, upon an indictment being found in the cases provided in section two hundred and sixty-six.

Order of recommitment, what to contain. 2153. SEC. 528. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any Sheriff, Constable, Marshal, or policeman within this State, and committed to the custody of the Sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.

Arrest on such order. 2154. SEC. 529. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county.

Same. 2155. SEC. 530. If the order recite, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

Amount of bail to be specified. 2156. SEC. 531. If the order be made for any other cause, and the offense be bailable, the Court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum affixed, which shall be specified in the order.

Who may take bail in such case. 2157. SEC. 532. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit the bail upon the holding of the defendant to answer before indictment, as prescribed in section five hundred and three, or by any other magistrate to be designated by the Court.

2158. SEC. 533. When bail is taken upon the recommitment of the defendant, the recognizance shall be in substantially the following form:

Form of recognizance on complaint. "An order having been made on the —— day of ——, A. D. 18—, by the Court [naming it], that A. B. be admitted to bail in the sum of —— dollars, in an action pending in that Court against him, in behalf of the people of the State of Nevada, upon an [information, presentment, indictment, or appeal, as the case may be], we, C. D. and E. F., of [stating their place of residence], hereby undertake that the above named A. B. shall appear in that or any other Court in which his appearance may be lawfully required upon that [information, presentment, indictment, or appeal, as the case may be], and shall at all times render himself amenable to its orders and processes, and appear for judgment, and surrender himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the State of Nevada the sum of —— dollars [inserting the sum in which the defendant is admitted to bail]."

2159. SEC. 534. The bail must possess the qualifications, and must be put in in all respects in the manner heretofore prescribed. Qualifications of bail

V.—MISCELLANEOUS PROCEEDINGS.

1.—*Compelling witnesses to attend.*

2160. SEC. 535. The process by which the attendance of a witness before a Court or magistrate is required, is a subpœna. Subpœna.

2161. SEC. 536. A magistrate before whom an information is laid may issue subpœnas, subscribed by him, for witnesses within the Territory, either on behalf of the people or of the defendant. Who may issue.

2162. SEC. 537. The District Attorney may issue subpœnas, subscribed by him, for witnesses within the State, in support of the prosecution, or for such other witnesses as the grand jury may direct to appear before the grand jury, upon any investigation pending before them. Same.

2163. SEC. 538. The District Attorney may, in like manner, issue subpœnas subscribed by him, for witnesses within the State, in support of an indictment, to appear before the Court at which it is to be tried. Same.

2164. SEC. 539. The Clerk of the Court at which an indictment is to be tried, shall, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, subscribed by him as Clerk, for witnesses within the Territory, as may be required by the defendant. Same.

2165. SEC. 540. A subpœna anthorized by the last four sections shall be substantially in the following form: The State of Nevada to A. B.: You are commanded to appear before C. D., a Justice of the Peace of —— Township, in —— County (or, the Court of ——, as the case may be), at [naming the place], on [stating the day and hour], as a witness in a criminal action, prosecuted by the State of Nevada against E. F. Given under my hand this —— day of ——, A. D. 18—. G. H., Justice of the Peace (or J. B., District Attorney, or "By order of the Court, L. M., Clerk," as the case may be). Form of.

2166. SEC. 541. If books, papers, or documents be required, a direction to the following effect shall be contained in the subpœna: And you are required also to bring with you the following [describing intelligibly the books, papers, or documents required]. Duces tecum.

2167. SEC. 542. A peace officer must serve within his county or district any subpœna delivered to him for service, either on the part of the people or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service, without delay. How served

2168. SEC. 543. The service of a subpœna shall be by showing the original to the witness personally, and informing him of the contents. Same.

2169. SEC. 544. When a person shall attend before a magistrate, grand jury, or Court, as a witness on behalf of the

Payment of witnesses out of county.

people, upon a subpœna, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the Court, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other case, the District Judge, by an order subscribed by him, may direct the Treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses.

Payment of witnesses.

2170. SEC. 545. Upon the production of the order, or a certified copy thereof, the County Treasurer shall pay the witness the sum specified therein, out of any fund in the County Treasury not otherwise specially appropriated or set apart. It shall not be necessary for such order to be presented to the Board of County Commissioners or Auditor. [As amended Feb. 12, Stats. 1869, p. 61.]

Attendance of witnesses out of county.

2171. SEC. 546. No person shall be obliged to attend as a witness before any Court or Judge out of the district where the witness resides, or is served with the subpœna, unless a Judge of the Court in which the offense is triable, or a Justice of the Supreme Court, upon an affidavit of the District Attorney, or prosecutor, or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpœna an order for the attendance of the witness.

Disobedience to subpœna, etc.

2172. SEC. 547. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, may be punished by the Court or magistrate as a contempt.

Recognizance, how forfeited.

2173. SEC. 548. Where a witness has entered into a recognizance to appear, as provided in section one hundred and sixty-seven, upon his failure so to do, his recognizance shall be forfeited, in the same manner as recognizances of bail.

Disobedience of subpœna issued by defendant.

2174. SEC. 549. A witness disobeying a subpœna issued on the part of a defendant, shall also forfeit to the defendant the sum of one hundred dollars, which may be recovered in a civil action, unless good cause can be shown for his non-attendance.

2.—*Testimony taken by commission.*

Defendant's witnesses examined before or after indictment.

2175. SEC. 550. When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment, have witnesses examined on his behalf, as prescribed in this Act, and not otherwise.

When such examination had.

2176. SEC. 551. When a material witness for the defendant is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally on a commission.

Commission denied

2177. SEC. 552. A commission is a process issued under the seal of the Court and the signature of the Clerk, directed to some person designated as Commissioner, authorizing him to examine the witness upon oath, on interrogations annexed thereto, to take and certify the deposition of the witness, and return it according to the directions given in the commission.

2178. SEC. 553. The Commissioner shall be either a District Judge, County Clerk, or Notary Public of the district to which the commission is issued. Who may be Commissioner.

2179. SEC. 554. The application must be made upon affidavit, showing: First—The nature of the offense charged. Second—The state of the proceedings in the action. Third—The name of the witness, and that his testimony is material to the defense of the action. Fourth—That the witness is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial. Application for commission, what to show.

2180. SEC. 555. The application may be made to the Court during the term, or to the Judge in vacation, and must be upon three days notice to the District Attorney. When and to whom made.

2181. SEC. 556. If the Court or Judge to whom the application is made be satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony. Order for commission, when to be granted.

2182. SEC. 557. If the application for a commission be granted, the Court or Judge may insert in the order therefor a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission. Stay of proceedings.

2183. SEC. 558. When the commission is ordered, the defendant must serve upon the District Attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days notice of the time at which they will be presented to the Court or Judge. Notice and interrogatories served on District Attorney.

2184. SEC. 559. The District Attorney may, in like manner, serve upon the defendant, or his counsel, cross-interrogatories, to be annexed to the commission, with like notice. Cross interrogatories.

2185. SEC. 560. In the interrogatories, either party may insert any question pertinent to the issue. What may be inserted.

2186. SEC. 561. When the interrogatories and cross-interrogatories are presented to the Court or Judge, according to the notice given, the Court or Judge shall modify the questions so as to conform them to the rules of evidence, and shall indorse upon them his allowance, and annex them to the commission. Allowance of interrogatories.

2187. SEC. 562. Unless the parties otherwise consent by an indorsement on the commission, the Court or Judge shall indorse thereon a direction as to the manner in which it shall be returned, and may, in his discretion, direct that it be returned by mail, or otherwise, addressed to the Clerk of the Court in which the action is pending. Direction to execute commission

2188. SEC. 563. The Commissioner, unless otherwise specially directed, may execute the commission as follows: First—He shall publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth. Second—He shall cause the examination of the witness to be reduced to writing. Third—He shall write the answers of the witness as near as possible Commission, how executed.

Same.

in the language he gives them, and shall read to him each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth. Fourth—If the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated. Fifth—If any papers or documents are produced before him, and proved by the witness, they shall be annexed to his deposition and be subscribed by the witness, and certified by the Commissioner. Sixth—The Commissioner shall subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness to the commission, and must close up under seal, and address the same as directed on the commission. Seventh—If there be a direction on the commission to return it by mail, the Commissioner shall immediately deposit it in the nearest Post Office. If any other direction be made by the written consent of the parties, or by the Court or Judge on the commission as to its return, he must comply with the direction.

What to be annexed.

2189. SEC. 564. A copy of the last section must be annexed to the commission.

Return of commission

2190. SEC. 565. If the commission and return be delivered by the Commissioner to an agent, he must deliver the same to the Clerk to whom it is directed, or to the Judge of the Court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hand of the Commissioner, and that it has not been opened or altered since he received it.

Same.

2191. SEC. 566. If the agent be dead, or from sickness or other casualty unable personally to deliver the commission and return as prescribed in the last section, it may be received by the Clerk or Judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hand of the Commissioner.

Filing commission and return.

2192. SEC. 567. The Clerk or Judge receiving and opening the commission and return, must immediately file it with the affidavit mentioned in the last two sections, in the office of the Clerk of the Court in which the indictment is pending.

Return by mail.

2193. SEC. 568. If the commission and return be transmitted by mail, the Clerk to whom it is addressed must receive it from the Post Office, and open and file it in his office, where it shall remain, unless the Court otherwise direct.

Commission and return open for inspection.

2194. SEC. 569. The commission and return shall be at all times open to the inspection of the parties, who shall be furnished by the Clerk with copies of the same, or of such part thereof as they may require, on payment of his fees.

Depositions evidence for either party.

2195. SEC. 570. The depositions taken under the commission may be read in evidence by defendant on the trial, upon it being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to any questions in the interrogatories, or to any answer in the deposition, as if the witness had been examined orally in Court.

3.—*Inquiry into the insanity of the defendant before trial or after conviction.*

Insanity excuses crime.

2196. SEC. 571. An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment, or punished, for a public offense, while he is insane.

Inquiry into defendant's sanity.

2197. SEC. 572. When an indictment is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the Court shall order the question to be submitted to the regular jury, or may order a jury to be summoned as prescribed in section three hundred and thirty-four, to inquire into the fact.

Trial or judgment suspended.

2198. SEC. 573. The trial of the indictment, or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury.

Insanity, how tried.

2199. SEC. 574. The trial of the question of insanity shall proceed in the following order: First—The counsel for the defendant shall open the case and offer evidence in support of the allegation of insanity. Second—The counsel for the people shall open their case and offer evidence in support thereof. Third—The parties may then respectively offer rebutting testimony only, unless the Court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause. Fourth—When the evidence is concluded, unless the case is submitted to the jury, on either or both sides, without argument, the counsel for the people must commence, and the defendant, or his counsel, may conclude the argument to the jury. Fifth—If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side. Sixth—The Court shall then charge the jury, if requested by either party.

Charge to jury.

2200. SEC. 575. The provisions of section three hundred and eighty-six, in respect to the charge of the Court to the jury upon the trial of an indictment, shall apply to the trial of the question of insanity.

Defendant found sane. Proceedings.

2201. SEC. 576.[1] If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may be.

Found insane. Proceedings.

2202. SEC. 577. If the jury find that the defendant is insane, the trial or judgment shall be suspended until he become sane, and the Court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the Sheriff to the custody of some proper person, and that upon his becoming sane, he be redelivered by such person to the Sheriff.

Bail exonerated.

2203. SEC. 578. The commitment of the defendant, as mentioned in the last section, shall exonerate any bail he may have given, or shall entitle any person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

Returning to sanity. Proceedings.

2204. SEC. 579. If the defendant be received by the person so appointed he must be detained by him until he becomes sane. When he becomes sane, such person shall give notice to the Sheriff and District Attorney of the county of that fact. The Sheriff shall thereupon, without delay, take the defendant from the custody of such person, and place him in proper custody, until he be brought to trial or judgment, as the case may be, or be otherwise legally discharged.

Expense of keeping defendant, to whom chargeable.

2205. SEC. 580. The expenses of placing the defendant in the custody of such proper person, of keeping him and bringing him back, shall in the first instance be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, town, city, or county, bound to provide for and maintain him elsewhere.

4.—*Dismissal of the action, before or after indictment, for want of prosecution, or otherwise.*

Prosecution, when dismissed.

2206. SEC. 581. When a person has been held to answer for a public offense, if an indictment be not found against him at the next term of the Court at which he is held to answer, the Court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

Indictment, when dismissed.

2207. SEC. 582. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the Court at which the indictment is triable, after the same is found, the Court shall order the indictment to be dismissed, unless good cause to the contrary be shown. (1)

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(1) RIGHT TO SPEEDY TRIAL IN CRIMINAL CASE.—Every person held on a criminal charge has the legal right to demand a speedy and impartial trial by jury.—Ex Parte Stanley, 4 Nev., p. 113.

SPEEDY TRIAL, WHAT.—The speedy trial guaranteed every person accused of crime is a trial as soon as possible after indictment found, without depriving the prosecution of a reasonable time for preparation.—Id.

Continuance of action and discharge of defendant.

2208. SEC. 583. If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own recognizance, or on the recognizance of bail, for his appearance to answer the charge at the time to which the action is continued.

Dismissal of action.

2209. SEC. 584. If the Court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail, shall be refunded to him.

Reasons to be set forth.

2210. SEC. 585. The Court may, either of its own motion or upon the application of the District Attorney, and in furtherance of justice, order any action after indictment to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes.

Discontinuance by Attorney General, etc.

2211. SEC. 586. Neither the Attorney General nor the District Attorney shall hereafter discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Dismissal to bar other prosecution

2212. SEC. 587. An order for the dismissal of the action, as provided in this Act, shall be a bar to another prosecution for the same offense, if it be a misdemeanor, but it shall not be a bar if the offense charged be a felony.

5.—*Entitling affidavits.*

Entitling affidavits.

2213. SEC. 588. It shall not be necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made.

6.—*Errors and mistakes in pleadings and other proceedings.*

Errors in pleading.

2214. SEC. 589. Neither a departure from the form or mode prescribed by this Act, in respect to any pleadings or proceedings, nor an error or mistake therein, shall render the same invalid, unless it have actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

7.—*Disposal of property stolen or embezzled.*

Custody of stolen property.

2215. SEC. 590. When property, alleged to have been stolen or embezzled, shall come into the custody of a peace officer, he shall hold the same subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Property to be returned to owner.

2216. SEC. 591. On satisfactory proof of the title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

Same.

2217. SEC. 592. If the property stolen or embezzled come into the custody of the magistrate, it shall be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Same.

2218. SEC. 593. If the property stolen or embezzled have not been delivered to the owner, the Court before which a conviction is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

When property is not claimed.

2219. SEC. 594. If property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on payment of the necessary expenses incurred for its preservation, deliver it to the County Treasurer, by whom it shall be sold and the proceeds paid into the County Treasury.

Property taken to be receipted for.

2220. SEC. 595. When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the Clerk of the Court to which the deposition and statements must be sent, as provided by section one hundred and seventy-three.

8.—*Proceedings in Justices' Courts.* (a)

How commenced.

2221. SEC. 596. All proceedings and actions before a Justice's Court, for a public offense, of which said Courts have jurisdiction, shall be commenced by complaint setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

(a) Justices' Courts have jurisdiction of: First, petit larceny; second, assault and battery not charged to have been committed upon a public officer in the discharge of his duties, or with intent to kill; third, breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both such fine and imprisonment.—Stats. 1864–5, p. 115; see Sec. 936, ante.

Sworn statement to be filed by complaint.

2222. SEC. 597. When a complaint is laid before a Justice of the Peace, or a Judge of any other inferior tribunal having jurisdiction of criminal offenses, that an offense has been committed, of which a Justices' Court or other inferior tribunal has jurisdiction, the Justice or Judge to whom the complaint is made shall cause the person making the complaint, or some one else, to file with him a statement in writing, sworn to before him, or some other officer authorized by law to administer oaths, setting forth the offense charged, with such particulars as to time, place, person, and property as to enable the person charged to understand the character of the offense complained of, and to answer the complaint or charge. The statement may be similar in form to the provisions in respect to an indictment. [As amended March 13, Stats. 1867, p. 127.]

Form.

Warrant of arrest.

2223. SEC. 598. If the Justice be satisfied therefrom that the offense complained of has been committed, he shall issue a warrant of arrest, which shall be substantially in the following form:

Form of.

"COUNTY OF ——.

"The State of Nevada to any Sheriff, Constable, Marshal, or policeman in this State: Complaint upon oath having been this day made before me [Justice of the Peace, Mayor, Police Judge, or Recorder, as the case may be], by C. D., that the offense of [designating it generally] has been committed, and accusing E. F. thereof, you are therefore commanded forthwith to arrest the above named E. F., and bring him before me forthwith, at [naming the place].

"Witness my hand and seal, at ——, this —— day of ——, A. D. 18—. A. B."

2224. SEC. 599. On being arrested, the defendant may plead to the complaint, or he may answer or deny the same. Such plea, answer, or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless, for good cause shown, an adjournment be granted. If an adjournment be granted, the defendant may be held to bail. **Pleadings.**

2225. SEC. 600. The defendant must be personally present in all cases before the trial shall proceed, unless he shall have given sufficient bail, as provided in this Act, or the District Attorney consent to proceed with the trial after the defendant shall have appeared in person, and shall also be represented by counsel. [As amended March 13, Stats. 1867, p. 127.] **Defendant to be present on trial.**

2226. SEC. 601. A docket shall be kept by the Justice, or by the Clerk of the Court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the Court therein. **Docket, how kept.**

2227. SEC. 602. The defendant may waive a jury trial in person or by attorney, after having appeared in the action, but shall be entitled to a jury trial if demanded by him. The jury may be composed of any number of persons eligible to serve as jurors, not exceeding twelve, nor less than three; but only by consent of parties shall the number be less than twelve. The formation of juries is provided for by special statute. [As amended March 13, Stats. 1867, p. 127.] **Jury trial.**

2228. SEC. 603. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as may be taken on the trial of an indictment for a misdemeanor; but the challenge shall in all cases be tried by the Court. **Challenge to jurors.**

2229. SEC. 604. The Court shall administer to the jury the following oath or affirmation: "You do swear (or affirm, as the case may be,) that you will well and truly try this issue between the State of Nevada and A. B., the defendant, and a true verdict give according to the evidence." **Oath to jurors.**

2230. SEC. 605. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant. **Jury to hear proof in public.**

2231. SEC. 606. The Court shall decide all questions of law which may arise in the course of the trial, but shall give no charge with respect to matters of fact. **Court to decide questions of law.**

2232. SEC. 607. After hearing the proofs and allegations, the jury may decide in Court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this **Deliberation of jury**

jury together, in some private and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into Court when they have so agreed."

Verdict to be general.

2233. SEC. 608. The verdict of the jury shall, in all cases, be general.

Same.

2234. SEC. 609. When the jury have agreed upon their verdict, they shall deliver it publicly to the Court, who shall cause the same to be entered on the minutes.

Against part of defendants.

2235. SEC. 610. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Jury to be discharged.

2236. SEC. 611. The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the Court sooner discharge them.

Second trial, when had.

2237. SEC. 612. If the jury be discharged, as provided in the last section, the Court may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict be rendered.

Judgment.

2238. SEC. 613. When the defendant pleads guilty, or is convicted, either by the Court or by a jury, the Court shall render judgment thereon of fine and imprisonment, or both, as the case may require.

To pay fine may direct imprisonment.

2239. SEC. 614. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be paid or satisfied.

Acquittal.

Malicious prosecution

2240. SEC. 615. When the defendant is acquitted, either by the Court or by the jury, he shall be immediately discharged, and if the Court certify in the minutes that the prosecution was malicious, or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

When judgment against prosecutor, etc.

2241. SEC. 616. If the prosecutor do not pay the costs, or give security therefor, as provided in the last section, the Court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

Entry of verdict.

2242. SEC. 617. When a verdict is rendered it shall be immediately entered upon the minutes.

Rendition of judgment.

2243. SEC. 618. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the Court shall appoint a time for rendering judgment, which shall not be more than two days and less than six hours after the verdict is rendered, and shall hold the defendant to bail to appear for judgment, and in default of bail he shall be committed.

Motion for new trial, etc.

2244. SEC. 619. At any time before the judgment is entered, the defendant may move for a new trial, or in arrest of judgment.

New trial, when granted.

2245. SEC. 620. A new trial can be granted only in the following cases: First—If the trial has been had in his absence. Second—When the jury has received any evidence out of Court. Third—When the jury has separated without leave of the Court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. Fourth—When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. Fifth—When there has been error in the decision of the Court, given on any question of law arising during the course of the trial. Sixth—When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

Arrest of judgment, on what founded.

2246. SEC. 621. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

Pronouncing judgment.

2247. SEC. 622. If the judgment be not arrested, or a new trial granted, judgment shall be pronounced at the time appointed, and entered in the minutes of the Court.

Discharge of defendant.

2248. SEC. 623. If judgment of acquittal be given, or judgment imposing a fine only, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Judgment of imprisonment.

2249. SEC. 624. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered to the Sheriff, Marshal, or other officer, which shall be a sufficient warrant for the execution of the same.

Imprisonment until payment of fine.

2250. SEC. 625. When a judgment is entered imposing a fine, and ordering the defendant to be imprisoned until the fine be paid, he shall be held in custody during the time specified in the judgment, unless the fine be sooner paid.

Application of fine.

2251. SEC. 626. Upon the payment of the fine the officer shall immediately discharge the defendant, if he be not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the County or City Treasurer, according as the offense is prosecuted in a Justice's Court. ([a])

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[a] All fines to be paid into School Fund.—Const., Art. XI, Sec. 3.

Same.

2252. SEC. 627. If a fine be imposed and paid before commitment, it shall be applied as prescribed in the preceding section.

Same.

2253. SEC. 628. If a defendant be discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, or the money appropriated in like manner as in the District Court.

Proceedings when defendant fails to appear for judgment.

2254. SEC. 629. In case of failure to appear for judgment, the Court shall issue a warrant for the arrest of the defendant, and shall enter judgment whenever the defendant appears, or is brought before it.

VII.—SPECIAL PROCEEDINGS.

1.—*Search warrant.*

Defined. 2255. SEC. 630. A search warrant is an order in writing in the name of the State of Nevada, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, or implements used, or evidences of crime, and bring it before the magistrate.

When to be issued. 2256. SEC. 631. It may be issued whenever property has been stolen or embezzled, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Same. 2257. SEC. 632. No search warrant shall be issued but upon probable cause, supported by affidavit naming or describing the person, and particularly describing the property and place to be searched.

Same. 2258. SEC. 633. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Depositions 2259. SEC. 634. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Search warrant, when and how issued. 2260. SEC. 635. If the magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

2261. SEC. 636. The warrant shall be in substantially the following form:

Form of. "COUNTY OF ——.

"The People of the State of Nevada, to any Sheriff, Constable, Marshal, or policeman in the County of ——. Proof by affidavit having been this day made before me by [naming every person whose affidavit has been taken] that [stating the grounds of the application according to section six hundred and thirty-two, or if the affidavit be not positive that there is probable cause for believing that, stating the ground of the application in the same manner]: you are thereupon commanded in the daytime (or at any time of the day or night, as the case may be, according to section six hundred and forty), to make immediate search on the person of C. D. (or in the house situated ——, describing it, or any other place to be searched, with reasonable particularity, as the case may be,) for the following property [describing it with reasonable particularity], and if you find the same, or any part thereof, to bring it forthwith before me at [stating the place]. Given under my hand, and dated this ——

day of ——, A. D. 18—. E. F., Justice of the Peace (or as the case may be)."

2262. SEC. 637. A search warrant may, in all cases, be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it, he being present and acting in its execution. How served

2263. SEC. 638. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance. Same.

2264. SEC. 639. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of his warrant, is detained therein, or when necessary for his own liberation. Same.

2265. SEC. 640. The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits be positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night. Same.

2266. SEC. 641. A search warrant must be executed and returned to the magistrate who issued it within five days after its date, and if in any other county, within thirty days; after the expiration of these times, respectively, the warrant shall, unless executed, be void. When to be executed and returned.

2267. SEC. 642. When the officer shall have taken any property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he shall leave it in the place where he found the property. Property taken to be receipted for.

2268. SEC. 643. When the property is delivered to the magistrate he shall, if it was stolen or embezzled, dispose of it as provided in sections five hundred and ninety-one to five hundred and ninety-five, both inclusive. Property, how disposed of.

2269. SEC. 644. The officer shall forthwith return the warrant to the magistrate, and at the same time deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." Inventory of.

2270. SEC. 645. The magistrate shall thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant. Same.

2271. SEC. 646. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto. Testimony, when taken

How taken. 2272. SEC. 647. The testimony given by each witness must be reduced to writing, and certified by the magistrate.

When property to be restored 2273. SEC. 648. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

Papers to be returned to Court. 2274. SEC. 649. The magistrate shall annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the Court having power to inquire into the offenses in respect to which the search warrant was issued, at or before its opening on the first day.

Maliciously obtaining warrant. 2275. SEC. 650. Whoever shall maliciously, and without probable cause, procure a search warrant to be issued and executed, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five thousand dollars, or imprisonment not exceeding six months.

Officer exceeding authority. 2276. SEC. 651. A peace officer who, in executing a search warrant, shall willfully exceed his authority, or exercise it with unnecessary severity, shall be deemed guilty of a misdemeanor, and punished as in the next preceding section is provided.

Defendant may be searched. 2277. SEC. 652. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or the order of the Court in which the defendant may be tried.

2.—*Proceedings against fugitives from justice.*

Fugitives to be delivered up. 2278. SEC. 653. A person charged, in any State or Territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this State, shall, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the Governor of this Territory, to be removed to the State or Territory having jurisdiction of the crime.

How apprehended. 2279. SEC. 654. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found in this State.

Proceedings for arrest and commitment. 2280. SEC. 655. The proceedings for the arrest and commitment of the person charged shall be in all respects similar to those provided in this Act for the arrest and commitment of a person charged with a public offense committed within this State, except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Same. 2281. SEC. 656. If, from the examination, it appear that the person charged has committed treason, felony, or other crime charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the Executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he give bail as provided in the next section, or until he be legally discharged.

2282. Sec. 657. The magistrate may admit the person arrested to bail by recognizance with sufficient securities, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the Governor of this State. **Bail.**

2283. Sec. 658. Immediately upon the arrest of the person charged, the magistrate shall give notice to the District Attorney of the district of the name of the person and the cause of the arrest. **District Attorney to be notified.**

2284. Sec. 659. The District Attorney shall immediately thereafter give notice to the executive authority of the State or Territory, or to the Prosecuting Attorney, or presiding Judge of the criminal Court of the city or county, within the State or Territory having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged. **Notice to authority of State having jurisdiction.**

2285. Sec. 660. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognizance, he be arrested under the warrant of the Governor of this State. **In certain event to be discharged.**

2286. Sec. 661. The magistrate shall make return of his proceedings to the next District Court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time of his arrest have not elapsed, the Court may discharge him from detention, or may order his recognizance of bail to be canceled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself within a time to be specified in the recognizance. **Return of proceedings to Court.**

3.—*Compromising offenses.*

2287. Sec. 662. When a defendant is held to answer on a charge of a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed: First—By or upon an officer of justice, while in the execution of the duties of his office. Second—Riotously. Third—With intent to commit a felony. **What offenses to be compromised.**

2288. Sec. 663. If the party injured appear before the Court to which the depositions are required to be returned, at any time before trial, and acknowledge in writing that he has received satisfaction for the injury, the Court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but, in such case, the reasons for the order must be set forth therein, and entered on the minutes. **Manner of compromising.**

2289. Sec. 664. The order authorized by the last section shall be a bar to another prosecution for the same offense. **Bar to future prosecution.**

Offenses not to be compromised. 2290. SEC. 665. No public offense shall be compromised, nor shall any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this Act.

4.—*Fines and forfeitures.* (a)

Applied to payment of costs. 2291. SEC. 666. All fines and forfeitures collected in any Court of this State shall be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred, and after such costs are paid, the residue shall be paid to the County Treasurer of the county in which the Court is held.

Penalty on officer not paying over. 2292. SEC. 667. If any Clerk, Justice of the Peace, Sheriff, Constable, or other officer, who may receive any fine or forfeiture, shall refuse or neglect to pay over the same according to law, and within thirty days after the receipt thereof, he shall be liable upon his official bond for the amount thereof, with fifty per cent damages and interest, to be recovered in like manner as for failing to pay over money received on execution, and shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not exceeding five hundred dollars, or by imprisonment not exceeding three months.

VIII.—PROMISCUOUS PROVISIONS.

Oath. 2293. SEC. 668. The term "oath," when used in this Act, shall be deemed to include an affirmation.

Signature. 2294. SEC. 669. When a signature of a person is required by this Act, the mark of a person, if he cannot write, shall be deemed sufficient, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

Order for transfer of prisoners from county to county. 2295. SEC. 670. When it is necessary for any purpose to have a person who is in prison in any part of the State, brought before a Court of criminal jurisdiction, an order for that purpose may be made by the Court, and the order shall be executed by the Sheriff of the county where it is made.

Process. 2296. SEC. 671. Process issued by a Court or magistrate shall be executed according to its terms.

Magistrate. 2297. SEC. 672. The term "magistrate," when used in this Act, signifies any one of the officers mentioned in section one hundred and two.

Peace officers. 2298. SEC. 673. The term "peace officer," when used in this Act, signifies any one of the officers mentioned in section one hundred and nine.

Fees allowed. 2299. SEC. 674. The fees allowed to Justices of the Peace, and other officers having the jurisdiction and authority of Justices of the Peace, Clerks, peace officers, and District Attorneys, shall, when the defendant is convicted, be considered and recovered against him as costs in the suit, and be collected in like manner as costs in civil cases.

(a) All fines pledged to educational purposes.—Const., Art. XI, Sec. 3.

2300. SEC. 675. In every case where a criminal action may have been or shall be removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the cause of indictment occurred. Costs in action removed before trial

2301. SEC. 676. The Clerk of the county to which such action is or may be removed, shall certify the amount of said costs to the Auditor of his county, which shall be examined, allowed, and paid as other county charges. Clerk to certify account.

2302. SEC. 677. That the superseding of any law creating a criminal offense, shall not be held to constitute a bar to the indictment and punishment of a crime already committed, or to bar the trial and punishment of a crime where an indictment has been already found, in violation of the law so superseded, unless the intention to bar such indictment and punishment, or trial and punishment where an indictment has been already found, is expressly declared in the superseding Act. Repeal of criminal law, effect of.

[Read "the State of Nevada" for "the people of the United States of the Territory of Nevada" wherever the same may occur in this Act. Also read "State" for "Territory."

An Act to amend an Act entitled "An Act to regulate proceedings in criminal cases in the Courts of justice in the State of Nevada, and making further provisions relating thereto."

[Approved March 13, 1867, p. 124.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

[Secs. 1 to 12 being amendatory of certain sections in the preceding Act, they are inserted in the place of the original sections.]

2303. SEC. 13. In a criminal action brought in a Justice's Court, or other Court or tribunals of inferior jurisdiction, when the offense charged involves an injury to real estate property, and it shall be made satisfactorily to appear to the Justice or Judge of the Court in which the action is pending, or at any time before or during the trial, that the action cannot be tried without deciding a question of title to real property, or of the right to the possession thereof, all further proceedings in the action shall be suspended, and the same, together with all the papers and a transcript showing the proceedings had, shall forthwith be transferred to the District Court of the county for the trial and judgment. The defendant may be committed for trial in the Court to which the action is transferred, or admitted to bail, as in other cases. The action, when transferred, shall be tried and prosecuted to judgment in the District Court, as if originally commenced therein. Proceedings where title to real property is involved.

2304. SEC. 14. The defendant may appeal to the District Court of the county from any judgment rendered in a criminal action in a Justice's Court or other inferior tribunal. The appeal may be taken at any time after judgment, by complying Appeal, how taken and tried.

Same. with the provisions of this section. The party intending to appeal must file with the Judge of the Court wherein the action was tried, and serve upon the District Attorney a notice entitled in the action, setting forth the character of the judgment and the intention of the party to appeal therefrom to the District Court. The notice must be served and filed within five days after the rendition of the judgment and entry thereof, in the docket of the Court trying the action. He may also, at any time thereafter, if he desire to be released from custody during the pendency of the appeal, or desire a stay of proceedings under the judgment until the appeal be disposed of, enter bail for the due prosecution of the appeal, the payment of any judgment, fine, and costs that may be awarded against him on the appeal, and for failure to prosecute the same, and for the rendering of himself in execution of the judgment appealed from, or of any judgment rendered against him in the action appealed from in the Court to which the same is appealed. The action in the appellate or District Court shall be tried *de novo*.

CHAPTER LIV.

OF DEFENDANTS TESTIFYING IN CRIMINAL PROSECUTIONS.

SECTION 2305. Defendants may testify in their own behalf.
2306. Not compelled to testify; declining to testify no inference of guilt; charge to jury.

An Act to enable a defendant to testify as a witness in criminal prosecutions. Stats. 1867, *p.* 58. ([a])

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Defendants may testify in their own behalf. 2305. SECTION 1. In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; the credit to be given to his testimony being left solely to the jury, under the instructions of the Court.

Not compelled to testify; declining to testify no inference of guilt; charge to jury. 2306. SEC. 2. Nothing herein contained shall be construed as compelling any such person to testify; and in all cases wherein the defendant to a criminal action declines to testify, the Court shall specially instruct the jury that no inference of guilt is to be drawn against him for that cause.

(a) This Act passed notwithstanding the objections of the Governor.

CHAPTER LV.

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An Act concerning crimes and punishments.

[Approved November 26, 1861, p. 56.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

I.—PERSONS CAPABLE OF COMMITTING CRIMES.

2307. SECTION 1. In every crime or public offense, there must be a union or joint operation of act and intention, or criminal negligence. **Essence of crime.**

2308. SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused. **Intent, how manifested**

2309. SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person knew the distinction between good and evil. **Of sound mind.**

2310. SEC. 4. An infant, under the age of fourteen years, shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown.

2311. SEC. 5. Any person counseling, advising, or encouraging an infant under the age of ten years, a lunatic, or idiot, to commit any offense, shall be prosecuted for such offense, where committed, as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising, or encouraging, as aforesaid, had he or she committed the offense directly, without the intervention of such idiot, lunatic, or infant. **Infant incapable. Couseling idiots or infants.**

2312. SEC. 6. A married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime not punishable with death; *provided*, it appear, from all the facts and circumstances of the case, that violent threats, command, or coercion were used; and, in such case, the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty. **Married women acting under coercion.**

2313. SEC. 7. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, **Drunkenness.**

Exception. contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offense, in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she, or they had been possessed of sound reason and discretion.

Misfortune. 2314. SEC. 8. All acts committed by misfortune, or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

Committed under duress. 2315. SEC. 9. A person committing a crime not punishable with death, under threats or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life was in danger, shall not be found guilty, and such threats or menaces being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

II.—ACCESSORY.

Accessory. 2316. SEC. 10. An accessory is he or she who stands by and aids, abets, or assists; or who, not being present, aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets, or assists, advises, or encourages, shall be deemed and considered as principal, and punished accordingly. (1)

(1) ACCESSORY BEFORE THE FACT-SAME AS PRINCIPAL. An accessory before the fact to a crime, though not present and in fact out of the State at its commission, may under our statutes (Stats. 1861, p. 57, Sec. 10; p. 462, Sec. 252,) be charged in an indictment, and tried, convicted, and sentenced in all respects as a principal.—State v. Chapman, 6 Nev., p. 320.

ROBBERY BY ABSENT PERSON.—When several persons combined to rob Wells, Fargo & Co.'s stage, in Washoe County, and one named Chapman, in pursuance of the combination, went to San Francisco and telegraphed when a large amount of money would be on the stage, and the others did the robbery: *Held*, that Chapman was an accessory before the fact, and as such properly charged and convicted with the others as having committed the robbery in Washoe County.—Id.

DOCTRINE OF AGENCY AS TO ACCESSORIES BEFORE THE FACT.—An accessory before the fact aiding, abetting, or counseling a crime, is, under our laws, to be treated as a principal, in the same manner as in the civil law what a principal does by an agent he is to be regarded as doing by himself.—Id.

INDICTMENT AGAINST ACCESSORY BEFORE THE FACT.—In an indictment against an accessory before the fact, it is not necessary to state the special act which the accused may have done in active or passive aid of the ultimate act, but only the ultimate act itself, the same as in case of a principal.—Id.

UNDER INDICTMENT FOR GRAND LARCENY, PRINCIPAL OR ACCESSORY CAN BE LEGALLY CONVICTED.—In a prosecution for grand larceny, where there is no evidence tending to prove guilt, either as principal or accessory, before the fact, there can be no legal conviction.—State v. Stewart, 6 Nev., p. 175.

2317. SEC. 11. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined a sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and enormity of the crime.

Accessory after the fact.

Penalty.

III.—WITNESSES.

2318. SEC. 12. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury, as in other cases. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness against another, in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution; and any person may be compelled to testify, as provided in this section.

Injured party may be witness.

2319. SEC. 13. No Indian or Chinese shall be permitted to give evidence in favor or against any white person. Every person who shall have one half or more of Indian blood shall be deemed an Indian. In no case shall the Act of which this is amendatory be construed to exclude as witnesses any negro, black, or mulatto person, but the credibility of such negro, black, or mulatto person shall be left entirely with the jury. [As amended March 14, Stats. 1865, p. 403.]

Indian or Chinese not competent. Half-blood.

Negro competent.

2320. SEC. 14. The solemn affirmation of witnesses shall be deemed sufficient. A false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit willful and corrupt perjury.

Affirmation sufficient.

IV.—OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

2321. SEC. 15. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Murder.

2322. SEC. 16. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. (1)

Malice.

(1) Evidence of threats made by defendant may be proved not only to establish the killing; but when the killing is admitted, for the purpose of establishing motive or deliberation.—State v. Bonds, 2 Nev., p. 265.

When a threat is made against a party, unless he will do something which he fails to do, and the threat is afterwards executed, it would seem to be as conclusive as if it had not been connected with a condition.—Id.

If the threat was made only conditionally, and the party threatened afterwards complied with the condition, this would, to a great extent, rebut the presumption arising from the threat.—Id.

INTENT TO KILL—WHEN ESSENTIAL TO CONSTITUTE MURDER.—An intent to take life is an essential element in the constitution of murder in the first degree, except where it is committed in the perpetration or attempt to perpetrate arson, rape, robbery, or burglary.—State v. Newton, 4 Nev., p. 410.

PRESUMPTIONS FROM USE OF DEADLY WEAPON.—When a deadly weapon is used in a manner likely to occasion the death of another, and death is the result, the presumptions are that the person using it intended to kill, and that such intent is a malicious one, but neither presumption is conclusive.—Id.

Malice, when implied.

2323. SEC. 17. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but, if such person shall be convicted on confession in open Court, the Court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Every person convicted of murder of the first degree shall suffer death, and every person convicted of murder of the second degree shall suffer imprisonment in the State Prison for a term not less than ten years, and which may be extended to life. (1)

Degrees of murder.

Punishment.

(1) Length of time for deliberation is not an essential ingredient in murder in the first degree. It is sufficient if the design to murder was formed before the striking of the fatal blow.—State v. Millain, 3 Nev., p. 410.

Where there is a preconceived design to commit some felony other than murder, and the result of the attempt, unintentional on the part of the felon, proves fatal to a human being, this premeditated felony would make malice aforethought, at common law. But this would not be willful, deliberate, premeditated killing under our statute, because of the absence of intent to take life.—Id., p. 411.

When a killing has been shown, the presumption arises that a murder has been committed. But there is no presumption that it is murder in the first degree in a case of this kind. If the defendant claims that it is only manslaughter, the proof devolves on him to show the circumstances, thus reducing the grade of offense. If the prosecution claims that it is murder in the first degree, it devolves upon the State to show the aggravating facts.—Id.

2324. SEC. 18. Manslaughter is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or, involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection. **Manslaughter.**

2325. SEC. 19. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. **Voluntary manslaughter.**

2326. SEC. 20. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder. **When punished as murder.**

2327. SEC. 21. Involuntary manslaughter shall consist in the killing of a human being, without any intent so to do, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner; *provided*, that where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder. **Involuntary manslaughter.**

2328. SEC. 22. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the State Prison for a term not exceeding ten years. **Punishment.**

2329. SEC. 23. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first. **Death within a year and a day. Computation.**

2330. SEC. 24. If the injury be inflicted in one county, and the party die within another county, or without the State, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county, and the party killed in another county, at the time the cause of death shall be administered, the accused may be tried in either county. **Place of trial.**

2331. SEC. 25. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends, or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and en- **Justifiable homicide.**

deavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Bare fear insufficient.

2332. SEC. 26. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

Killing in self-defense

2333. SEC. 27. If a person kill another in self-defense, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

Officer justified in killing.

2334. SEC. 28. [Superseded by Act of March 9, Stats. 1866, p. 247; see Sec. ~~3077~~, post.] 2679

Justifiable homicide.

2335. SEC. 29. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent Court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable, by misadventure.

2336. SEC. 30. Excusable homicide by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an ax, and the head flies off and kills a bystander, or where a parent is moderately correcting his child, or a master his servant, or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

Excusable otherwise.

2337. SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

Acquittal, when appearing justifiable.

2338. SEC. 32. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Mitigating circumstances.

2339. SEC. 33. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified, or excused in committing the homicide.

Women concealing death of bastard.

2340. SEC. 34. If any woman shall endeavor privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof, shall suffer imprisonment in the State Prison, for a term not exceeding one year; *provided*, however, that nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child. Punishment.

2341. SEC. 35. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie knife, dirk, smallsword, backsword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof shall be punished accordingly. Dueling. Punishment of.

2342. SEC. 36. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the State Prison not less than two nor more than ten years, and shall be incapable of voting or holding any office of trust or profit under the laws of this State. Persons concerned in, disfranchised.

2343. SEC. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon, or spectator, or who shall advise or give assistance to such duel, shall be a competent witness against any person offending against any of the provisions of this Act, and may be compelled to appear and give evidence before any Justice of the Peace, grand jury, or Court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. Persons implicated in, to give evidence.

2344. SEC. 38. If any person shall post another, or, in writing, or print, or orally, shall use any reproachful or contemptuous language to, or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the State Prison for a term not less than six months nor more than one year, and fined in any sum not less than five hundred nor exceeding one thousand dollars. Posting for not fighting. Punishment of.

2345. SEC. 39. If any person, with or without deadly weapons, upon previous concert and agreement, fight, one with another, upon conviction thereof, they, or either, or any of them, shall be punished by imprisonment in the State Prison for a term not less than two years nor more than five years. Should death ensue to any person in such fight, or should any person die from any injury received in such fight, within one year and one day, the person or persons causing such death shall be deemed guilty of murder, and punished accordingly. Prize fighting. Punishment of.

2346. SEC. 40. Any person in this State having, carrying, or procuring from another person any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of two or more persons, draw or exhibit any of said deadly weapons, in a rude, angry, or threatening manner, not in necessary self-defense, or who shall in any manner Drawing deadly weapons.

Fines, etc. unlawfully use the same in any fight or quarrel, the person or persons so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or shall be imprisoned in the County Jail for a term not exceeding six months; *provided*, nevertheless, that no Sheriff, Deputy Sheriff, Marshal, Constable, or other peace officer, shall be held to answer, under the provisions of this Act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties. Duties of officers relative to. It shall be the duty of all military, civil, and peace officers in this State to be vigilant in carrying the provisions of this Act into full force and effect. [As amended March 4, Stats. 1873, p. 118.]

Assault and intimidation. 2347. SEC. 41. If any person shall assault and beat another with a cowhide, stick, or whip, having at the time, in his possession, a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the State Prison not less than one or more than ten years.

Administering poison. 2348. SEC. 42. Every person who shall willfully and maliciously administer, or cause to be administered to or taken by any person, any poison, or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than ten years. and which may extend to life. And any person who shall sell, furnish, procure, prescribe, take, administer, or who shall cause to be sold, furnished, procured, prescribed, taken, or administered, any medicinal substance, or other substance, or liquid, with the intention to procure or cause the miscarriage of any woman, then being pregnant, or with child, or shall use, or cause to ~~be~~ used, any instrument or instruments whatever, with the intention aforesaid, or who shall in any manner make known to any person or persons the ingredients of any medicinal substance or substances, or other substances, or liquid, with the like intent, and shall be thereof duly convicted, shall be punished by imprisonment in the State Prison for a period not less than one nor more than ten years; *provided*, that no physician shall be affected by the last clause of this section who, in the discharge of his professional duty, produces the miscarriage of any woman in order to save her life. [As amended February 16, Stats. 1869, p. 64.]

Procuring or administering any substance to cause abortion.

Punishment.

Mayhem. 2349. SEC. 43. Mayhem consists of unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily, or of purpose, put out an eye or eyes, every such person shall be guilty of mayhem. Punishment. The crime of mayhem shall be punishable by imprisonment in the State Prison for a term not exceeding fourteen years.

Rape. 2350. SEC. 44. Rape is the carnal knowledge of a female forcibly and against her will, and a person duly convicted thereof Punishment of. shall be punished by imprisonment in the State Prison for a term not less than five years, and which may extend to life;

and any person of the age of fourteen years and upwards who shall have carnal knowledge of any female child under the age of twelve years, either with or without her consent, shall be adjudged guilty of the crime of rape, and be punished as before provided.

Crime against nature

2351. SEC. 45. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the State Prison for a term not less than five years, and which may extend to life.

Assault.

Punishment of.

2352. SEC. 46. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another, and every person convicted thereof shall be fined not exceeding five hundred dollars, or imprisoned in the County Jail not exceeding six months. [As amended March 4, Stats. 1873, p. 118.]

Assault with intent.

2353. SEC. 47. An assault with intent to kill, commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the State Prison for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the State Prison not less than one year, nor exceeding two years, or to a fine not less than one thousand nor exceeding five thousand dollars, or to both such fine and imprisonment. [As amended March 4, Stats. 1873, p. 118.] (1)

(1) EVIDENCE OF PROVOCATION.—In a prosecution for assault with a deadly weapon with intent to inflict upon the person of another bodily injury, acts occurring a day or two prior to the assault, and known to defendant, cannot of themselves alone be shown as evidence of a provocation for the assault.—State v. Lawry, 4 Nev., p. 161.

When a party draws a pistol with the avowed intention of killing another, third parties interfere to prevent the threat being carried out, the pistol goes off, and the party threatened is killed, the natural presumption would be that the defendant had succeeded in carrying out his intention, notwithstanding the interference. If the defendant claims that the pistol went off accidentally in the scuffle with the bystanders who interfered to prevent the shooting, it lies on him to present some proof of that fact.—State v. Bonds, 2 Nev., p. 265.

PROVOCATION—WHAT.—In cases where provocation either mitigates or justifies an act of violence, such act must be the immediate result of and closely follow the provocation.—State v. Lawry, 4 Nev., p. 161.

PROVOCATION AS QUESTION OF FACT OR LAW.—As a general rule, the determination as to what length of time may intervene between an act of provocation and the commission of a crime should be left to the jury, when the provocation is not so far distant as to leave no doubt.—Id.

EXERCISE OF LEGAL RIGHT NOT A PROVOCATION.—The simple exercise of a legal right, no matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence.—Id.

FINE FOR ASSAULT WITH DEADLY WEAPON.—Under the statute relating to the crime of assault with a deadly weapon with intent to inflict upon the person of another a bodily injury (Stats. 1861, p. 64, Sec. 47), a Court has no authority to impose a fine of any sum less than one thousand dollars, though the sentence may also be for imprisonment.—Id.

CRIMINAL LAW—ASSAULT WITH DEADLY WEAPON.—To constitute the crime of assault with a deadly weapon with intent to inflict a bodily injury, there must be an unlawful attempt with a weapon, deadly either in its nature or capable of being used in a deadly manner, to inflict a bodily injury, and with the present ability so to do.—State v. Napper, 6 Nev., p. 113.

ATTEMPTED ASSAULT WITH UNLOADED PISTOL.—Where, on a trial for assault with a deadly weapon with intent to inflict a bodily injury, it appeared that defendant, within shooting, but not within striking distance, held a capped pistol in his hand, pointed it at the prosecutor, and attempted to discharge it: *Held*, that there could be no conviction without proof that the pistol was loaded.—Id.

A PISTOL NOT ALWAYS A DEADLY WEAPON.—A pistol may be a deadly weapon under some circumstances without being loaded, but not so unless it can be used in some other deadly manner besides shooting.—Id.

NO PRESUMPTION OF LOADING OF PISTOL FROM ATTEMPTED USE.—The fact that an attempt was made to use a pistol as if it were loaded is not of itself sufficient to warrant an inference that it was loaded.—Id.

ASSAULT—ABILITY AND INTENTION.—To warrant a conviction for assault with a deadly weapon with intent to inflict a bodily injury, there must be a showing of both ability and intention to commit the offense.—Id.

Assault and battery.

2354. SEC. 48. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the County Jail for a term not exceeding six months. [As amended March 4, Stats. 1873, p. 118.]

False imprisonment

2355. SEC. 49. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the State Prison for a term not exceeding one year.

Kidnaping, what is.

2356. SEC. 50. Kidnaping is the forcible abduction or stealing away of a man, woman, or child from his or her own home, and sending or taking him or her into another country.

2357. SEC. 51. Every person who shall forcibly steal, take, or arrest any man, woman, or child, whether white, black, or colored, or any Indian in this State, and carry him or her into another county, State, or Territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this State, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnaping, and be punished by imprisonment in the State Prison for any term not less than one, nor more than ten years, for each person kidnaped, or attempted to be kidnaped. Punishment of.

2358. SEC. 52. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, or Indian, to go out of this State, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, colored person, or Indian, into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnaping, and, upon conviction thereof, shall be punished as in the next preceding section specified. Kidnaping to enslave.

2359. SEC. 53. Every person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, and shall be thereof convicted, shall be punished by imprisonment in the State Prison for a term not less than two, nor more than fourteen years; and the record of such conviction shall operate as a divorce to the party so married. Forcing woman to marry.

2360. SEC. 54. Every person who shall maliciously, forcibly, or fraudulently lead, take, or carry away, or decoy, or entice away any child under the age of ten years, with intent to detain and conceal such child from its parents, guardian, or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the State Prison not exceeding ten years, or by a fine not exeeding five thousand dollars, or by both such fine and imprisonment. Every person who shall willfully poison any spring, well, or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the State Prison for a term not less than one nor more than ten years. Abduction of children. Poisoning water. Punishment.

2361. SEC. 55. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall be punished, upon conviction thereof, by imprisonment, not more than one year, nor less than six months, and by a fine not exceeding five hundred, nor less than one hundred dollars. Extortion by threats. Punishment.

OFFENSES AGAINST HABITATIONS AND OTHER BUILDINGS.

Arson, first degree. Punishment.

2362. SEC. 56. Every person who shall willfully and maliciously burn, or cause to be burned, in the night-time, any dwelling house in which there shall be at the time some human being, shall be deemed guilty of arson in the first degree, and, upon conviction thereof, shall be punished by imprisonment not less than two years, and which may extend to life, in the State Prison.

Arson, second degree. Punishment.

2363. SEC. 57. Every person who shall willfully and maliciously burn, or cause to be burned, any dwelling house or building owned by himself, or the property of another, in the day-time, or in the night or day-time willfully burn, or cause to be burned, any kitchen, office, shop, barn, stable, storehouse, warehouse, or other building, or stacks or stocks of grain, or standing crops, the property of any other person or corporation, or any church, meeting house, school house, State House, Court House, or other public building, or any ship, vessel, boat, or other water craft, or any bridge of the value of fifty dollars or more, erected across any of the waters of this State, such person so offending shall be deemed guilty of arson in the second degree, and, upon conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of such burning, as mentioned in this and the preceding section, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

Burning to defraud insurer.

2364. SEC. 58. Every person who shall willfully burn, or cause to be burned, any building, or any goods, wares, merchandise, or other chattel, which shall be at the time insured against loss or damage by fire, with intent to injure or defraud such insurer, whether the same be the property of such person, or of any other, shall, upon conviction, be adjudged guilty of arson in the second degree, and punished accordingly.

Burglary, what.

2365. SEC. 59. Every person who shall, in the night-time, forcibly break and enter, or without force (the doors or windows being open), enter into any dwelling house, or tent, or any other house or building whatever, or any vessel, water craft, railroad, passenger, or freight car, with intent to commit murder, robbery, rape, mayhem, grand larceny, petit larceny, or any felony, shall be deemed guilty of burglary, and, on conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one nor more than ten years. Whenever such burglary is committed upon a railroad train, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county said crime was committed, the offender may be arrested and tried in any county through which said railroad train may have run. Every person who, in the day-time, shall enter any dwelling house, shop, warehouse, depot, store, mill, barn, stable, outhouse, other building, vessel, or railroad passenger or freight car, with intent to steal, or to commit any felony whatever therein, is guilty of housebreaking, and, on conviction, shall be punished by imprisonment in the State Prison for not less than one nor more than five years. Night-time, as in this section named, means the period between sunset and sunrise. If housebreaking be committed upon any railroad train, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county said crime was committed, the offender may be arrested and tried in any county through which said railroad train may have run. [As amended March 7, Stats. 1873, p. 144.] **Punishment.**

OFFENSES AGAINST PROPERTY.

2366. SEC. 60. Robbery is the felonious and violent taking of money, goods, or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the State Prison for a term not less than five years, and which may extend to life. (1) **Robbery what is.** **Punishment.**

(1) DECLARATIONS OF PERSON ROBBED AS PART OF RES GESTÆ.—On a trial for robbery, the declarations of the person robbed as to the fact of the robbery, made immediately after the crime was committed, are admissible in evidence as part of the *res gestæ*.—State v. Ah Loy, 5 Nev., p. 99.

CONTEMPORANEOUSNESS OF DECLARATIONS AS PART OF RES GESTÆ.—To make the declarations of a party injured part of the *res gestæ*, they must be contemporaneous with the crime; but in order to be contemporaneous within the meaning of the law, it is not indispensable that they should be precisely concurrent in point of time. If they spring out of and elucidate the transaction, and are voluntary and spontaneous, and made so near the time as reasonably to preclude the idea of deliberate design, they may be regarded as contemporaneous. Id.

2367. SEC. 61. Every person who shall feloniously steal, take, and carry away, lead or drive away, the personal goods or property of another, of the value of fifty dollars or more, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be punished by imprisonment in the State Prison for any term not less than one year nor more than fourteen years. **Grand larceny.** **Punishment.**

2368. SEC. 62. Every person who shall feloniously steal, take, and carry, lead, or drive away, the personal goods or property of another, under the value of fifty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall be punished by imprisonment in the County Jail not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. **Petit larceny.** **Punishment.**

2369. SEC. 63. That every person who shall feloniously steal, take, and carry, lead, or drive away, any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petty larceny, and, upon conviction thereof, shall be punished by imprisonment in the County Jail, not more than **Dog stealing, petit larceny.**

six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that, unless the same be paid, the defendant shall be imprisoned in the County Jail, at the rate of one day for every two dollars of the fine.

Bonds, bills, notes, etc., larceny of.

2370. SEC. 64. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, receipts or certificates, or warrants for or concerning money, goods, or property, due, or to become due, or to be delivered, or any public security issued by the United States, or by this State, and any deed or writing containing a conveyance of land, or valuable contract, in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods, of which larceny may be committed, and the money due thereon, or secured thereby and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or affected thereby, as the case may be, shall be deemed the value of the article stolen.

Receiving stolen goods.

2371. SEC. 65. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery, burglary, or embezzlement, knowing the same so to have been obtained, shall, upon conviction, be imprisoned in the State Prison for a term not exceeding five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and every such person may be tried, convicted, and punished, as well before as after the trial of the principal. No person convicted of the offense specified in this section shall be condemned to imprisonment in the State Prison, unless the value of the thing bought or received shall amount to fifty dollars, but the same shall be punished as provided in cases of petit larceny.

Stolen goods to be restored to owner.

2372. SEC. 66. All property obtained by larceny, robbery, burglary, or embezzlement, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser, or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the property.

Goods stolen out of State.

2373. SEC. 67. Every person bringing any goods or property into this State, taken by himself, or which he knew was taken by another, in another Territory or State, by robbery, burglary, embezzlement, or larceny, shall, upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this State, taken in either of the ways aforesaid in another Territory or State, be committed to the County Jail, to await a requisition from the Governor of the Territory or State whence such goods or property were brought as aforesaid into this State; *provided*, that such person shall not be detained in such custody longer than a period of eight weeks.

Offender to be committed to await requisition.

Marking or branding cattle.

2374. Sec. 68. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the State Prison for a term not less than six months nor more than five years.

2375. Sec. 69. [Superseded by Act of March 9, Stats. 1866, p. 241, Sec. 54; see Sec. ~~3050~~, post.] 2652.

2376. Sec. 70. [Superseded by Act of March 9, Stats. 1866, p. 241, Sec. 55; see Sec. ~~3051~~, post.] 2653.

2377. Sec. 71. [Superseded by Act of March 9, Stats. 1866, p. 242, Sec. 56; see Sec. ~~3052,~~ post.] 2654.

Destroying deeds.

2378. Sec. 72. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant, or certificate, for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this State, or of the United States, or of any State or Territory, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the State Prison for a term not less than one year nor more than five years.

Removing land marks

2379. Sec. 73. Every person who shall willfully or maliciously remove any monument of stone, wood, or other durable material, erected for the purpose of designating the corner, or any other point, in the boundary of any lot or tract of land, or any post or stake fixed or driven in the ground, for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument, made for the purpose of designating any point, course, or line, in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the County Jail not less than one month nor more than one year.

Embezzlement by clerks, etc.

2380. Sec. 74. If any clerk, apprentice, or servant, or other person, whether bound or hired, to whom any money, or goods, or chattels, or other property, shall be intrusted by his master or employer, shall withdraw himself from his master or employer and go away with the said money, goods, chattels, or property, or any part thereof, with the intent to steal the same, and defraud his master or employer thereof, contrary to the trust or confidence in him reposed by his said master or employer, or being in the service of his said master or employer, shall embezzle the said moneys, goods, chattels, or property, or any part thereof, or otherwise shall convert the same to his own use, with like purpose to steal the same, every such person so offending shall be punished in the manner prescribed by law, for feloniously stealing property of the value of the articles so taken, embezzled, or converted. (a)

(a) Embezzlement, etc., Stats. 1866, p. 241; see Sec. ~~3050,~~ 2652, post.

Conversion of goods by bailee.

2381. SEC. 75. If any bailee of any money, goods, or property shall convert the same to his own use, with intent to steal the same, he shall be deemed guilty of grand or petit larceny, according to the amount of the money or the value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and on conviction thereof shall be punished accordingly.

Embezzlement by lodger.

2382. SEC. 76. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and, on conviction, shall be punished accordingly.

FORGERY AND COUNTERFEITING.

Certain offenses deemed.

2383. SEC. 77. Every person who shall falsely make, alter, forge, or counterfeit any record, or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any Auditor's warrant for the payment of the money at the Treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note, for money or other property, or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this State or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this State or not; every person so offending shall be deemed guilty of forgery, and, upon conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one year nor more than fourteen years. (1) Same.

(1) ALLEGATIONS AND PROOF AS TO PERSONS INJURED BY FORGERY.—In cases of forgery there are generally two persons who legally may be defrauded—the one whose name is forged and the one to whom the forged instrument is to be passed, and the indictment may lay the intent to defraud either of them; and proof of an intent to defraud either and to pass the instrument as good, though there be shown no actual intent to defraud the particular person, will sustain the allegation.—State v. Cleveland, 6 Nev., p. 181.

FORGERY OF BANK CHECK—INTENT TO DEFRAUD PRETENDED DRAWER.—Where an indictment for forgery of a check on a bank alleged an intent to defraud the drawer: *Held*, that though in one sense such drawer could not be defrauded, as he could not be held to pay forged paper, yet, as he might have paid, had the forgery not been discovered, and as the forger could not have intended a discovery, there was an existent possibility of fraud upon him, and that was sufficient.—Id.

FORGERY OF CHECK PAYABLE TO "SAPPHIRE MILL OR BEARER."—In a prosecution for forging a check drawn in favor of "Sapphire Mill or Bearer:" *Held*, that an objection that the check presented no sensible payee, was invalid, for the reason that the check being payable to bearer was sufficient.—Id.

FORGERY OF CHECK ON "AGENCY OF BANK OF CALIFORNIA."—In a prosecution for forging a check drawn on the "Agency of the Bank of California," where it was both alleged and proved that the bank was a corporation under the laws of California, and that it had an agency in Virginia City, whose business it was to receive deposits and pay out money on the checks of depositors: *Held*, that an objection that the check presented no sensible drawee was invalid.—Id.

FORGERY—PROOF OF EXISTENCE OF CORPORATION INJURED.—In a prosecution for forging a check upon an "Agency of the Bank of California:" *Held*, that the facts of the existence of the corporation and of the agency might be made by oral testimony, and that the production of the certificate of incorporation was unnecessary.—Id.

2384. SEC. 78. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this State, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person, body politic, or corporation, knowing the same to be Counterfeiting coin counterfeited, shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one year nor more than fourteen years.

Having or receiving, with intent to utter the same.

2385. SEC. 79. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current, or hereafter to be current in this State, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than one nor more than fourteen years.

Counterfeiting stamps, labels, etc.

2386. SEC. 80. That every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares, or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares, or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the County Jail for a term not exceeding six months, or by a fine of not less than three hundred or more than six hundred dollars.

Selling goods having forged stamps.

2387. SEC. 81. That any person who shall sell any goods, wares, or merchandise having thereon any forged or counterfeit stamps or labels, purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the County Jail for a term not exceeding six months, or by a fine of not less than three hundred nor more than six hundred dollars.

Possessing or receiving forged instruments, etc.

2388. SEC. 82. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bills, or bills for the payment of money or property, with intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this State or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed to defraud any person or persons, body politic or corporate, whether in this State or elsewhere, shall, on conviction thereof, be punished by imprisonment in the State Prison for a term not less than one nor more than fourteen years.

Possessing, etc., fictitious papers.

2389. SEC. 83. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this State or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check purporting to be the bill, note, or check, or other instrument in writing, for the payment of money or property of some bank, corporation, copartnership, or individual, where, in fact, there shall be no such bank, corporation, copartnership, or individual in existence, the said person knowing the said bill, note, check, or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and, on conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one nor more than fourteen years.*

Making or having counterfeit die or plate

2390. SEC. 84. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever made use of in counterfeiting the coin now made current or hereafter to be made current in this State, or in counterfeiting bank notes or bills, upon conviction thereof shall be punished by imprisonment in the State Prison for a term not less than one nor more than fourteen years, and all such dies, plates, apparatus, paper, metal, or machine intended for the purpose aforesaid shall be destroyed.

Proof of incorporation not necessary.

2391. SEC. 85. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or Act of incorporation, but the same may be proved by general reputation.

Experts to prove forgery, etc

2392. SEC. 86. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Counterfeiting seal.

2393. SEC. 87. Every person who shall fraudulently forge or counterfeit the seal of this State, or the seal of any Court or public officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall willfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the State Prison for a term not less than one nor more than fourteen years.

Counterfeiting gold dust.

2394. SEC. 88. If any person shall counterfeit any kind or species of gold dust, silver, gold bullion or bars, lumps, pieces, or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver currently passing in this State, or shall alter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one year nor more than fourteen years.

Possessing or receiving same.

2395. SEC. 89. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver, gold, bullion, or bars, lumps, pieces, or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver currently passing in this State, or entering in any wise into the circulating medium of the State, with intention to utter, put off, or pass the same, or permit, cause, or porcure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than one year nor more than fourteen years.

CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE. (a)

Perjury and subornation of.

2396. SEC. 90. Every person, having taken a lawful oath, or made affirmation, in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm willfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm, as aforesaid, shall be deemed guilty of perjury, or subornation of perjury (as the case may be), and, upon conviction thereof, shall be punished by imprisonment in the State Prison for any term not less than one nor more than fourteen years.

Conviction by perjury of a capital offense deemed murder.

2397. SEC. 91. Every person who, by willful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and, upon conviction thereof, shall suffer the punishment of death.

2398. SEC. 92. [Superseded by Act of March 9, Stats. 1866, p. 240, Sec. 50; see Sec. ~~3046~~, post.] 2648

2399. SEC. 93. [Superseded by Act of March 9, Stats. 1866, p. 240, Sec. 51; see Sec. ~~3047~~, post.] 2649

2400. SEC. 94. [Superseded by Act of March 9, Stats. 1866, p. 240, Sec. 52; see Sec. ~~3048~~, post.] 2650

2401. SEC. 95. [Superseded by Act of March 9, Stats. 1866, p. 243, Sec. 61; see Sec. ~~3057~~, post.] 2659

2402. SEC. 96. [Superseded by Act of March 9, Stats. 1866, p. 243, Sec. 62; see Sec. ~~3058~~, post.] 2660

(a) Of penalties for bribery, extortion, embezzlement, misconduct in office, and to enforce official duty (Stats. 1866, p. 240), see Sec. 3046 et seq., post.

2403. SEC. 97. [Superseded by Act of March 9, Stats. 1866, p. 244, Sec. 63; see Sec. ~~3059~~, post.] 2661

Personating another

2404. SEC. 98. Every person who shall falsely represent or personate another, and, in such assumed character, shall marry another, become bail or surety for any party, in any proceeding, civil or criminal, before any Court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or of any other instrument which, by law, may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable, in any event, to the payment of any debt, damages, cost, or sum of money, or his right or interest may, in any manner, be affected, shall, upon conviction, be punished by imprisonment in the State Prison not less than one year, nor exceeding two years, or by fine not exceeding five thousand dollars.

Same.

2405. SEC. 99. Every person who shall falsely represent or personate another, and, in such assumed character, shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money or property so received.

2406. SEC. 100. [Superseded by Act of March 9, Stats. 1866, p. 244, Sec. 64; see Sec. ~~3060~~, post.] 2662,

Releasing prisoner after conviction.

2407. SEC. 101. If any person or persons shall set at liberty, or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the State Prison for a term not less than one year nor more than fourteen years ; and if any person or persons shall set at liberty, or rescue any person who shall have been found guilty, or convicted of a crime, the punishment of which is imprisonment in the State Prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Releasing prisoner before conviction.

2408. SEC. 102. If any person shall set at liberty, or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable in the State Prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the State Prison not less than one, nor exceeding ten years; and if the person rescued, or set at liberty, stands charged, committed, or convicted of any misdemeanor, or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue, or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued, or set at liberty, if he or she had been found guilty.

2409. SEC. 103. [Superseded by Act of March 9, Stats. 1866, p. 244, Sec. 65; see Sec. ~~3061~~, post.] 2663, Aiding escape.

2410. SEC. 104. If any person shall carry to any convict imprisoned, or in custody, or into any County Jail or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisoned in the State Prison not less than one year nor exceeding five years.

Releasing prisoner on civil process.

2411. SEC. 105. If any person or persons shall rescue another in legal custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Aiding an attempted escape.

2412. SEC. 106. If any person shall aid or assist a prisoner, lawfully imprisoned or detained in custody for any offense against this State, or who shall be lawfully confined by virvirtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey, or cause to be delivered, to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape, or attempt to escape, be actually made) shall, on conviction, be punished by fine, not exceeding five thousand dollars, and imprisoned in the State Prison not less than one year nor exceeding five years.

2413. SEC. 107. [Superseded by Act of March 9, Stats. 1866, p. 244, Sec. 66; see Sec. ~~3062~~, post.] 2664

2414. SEC. 108. [Superseded by Act of March 9, Stats. 1866, p. 245, Sec. 67; see Sec. ~~3063~~, post.] 2665

Compromising offenses.

2415. SEC. 109. Every person having a knowledge of the actual commission of any offense, punishable by imprisonment in a County Jail, or by fine, or of any misdemeanor or violation of any statute, for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offense or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the County Jail not more than six months; *provided*, that this section shall not apply to those offenses which may lawfully be compromised by leave of the Court.

Conspiring to commit offenses.

2416. SEC. 110. If two or more persons shall conspire, either to commit any offense, or falsely and maliciously to indict another for any offense, or to procure another to be charged or arrested for any such offense, or falsely to move or maintain any suit, or to cheat or defraud any person of any property, by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretenses; or to cheat or defraud any person of any property, by any means which are in themselves criminal; or to commit any acts injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or due administration of the laws; they shall, on conviction, be punished by imprisonment in the County Jail not more than six months, or by a fine not more than one thousand dollars; *provided*, that it shall not be necessary to procure conviction under this section, to prove any overt act done in pursuance of such conspiracy.

Acting for another without authority.

2417. SEC. 111. If any person shall willfully take upon himself to exercise or officiate in any office or place of another, in this State, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding one thousand dollars.

Embracery

2418. SEC. 112. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, and the like. Every embracer, who shall directly or indirectly promise, or offer to any juror, or procure any juror to take money, or any other bribe, present, or reward, or any contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, or shall corruptly influence, or attempt to influence, any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the State Prison not less than one year, nor exceeding five years; and any juror, convicted of taking any money, present, reward, or any other thing, or corruptly being influenced, as aforesaid, shall suffer the like imprisonment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the trial jurors. (1)

Punishment.

(1) There is no such crime known to the law as an attempt to commit embracery. Embracery is itself but an attempt to do a wrong. There can be no indictment for an attempt to attempt.—State v. Sales, 2 Nev., p. 268.

To attempt to commit a crime is itself a crime at common law; but this cannot apply to the crime of embracery.—Id.

It is also a crime at common law to solicit another to commit either a felony or misdemeanor; and whatever is a crime at common law is punishable under our statute. It is a crime to solicit another to commit embracery. It is a crime in A. to solicit B. to attempt to corrupt a juror.—Id.

2419. SEC. 113. [Superseded by Act of March 9, Stats. 1866, p. 241, Sec. 53; see Sec. ~~3049~~, post.] 2657

2420. SEC. 114. [Superseded by Act of March 9, Stats. 1866, p. 245, Sec. 68; see Sec. ~~3064~~, post.] 2666

2421. SEC. 115. [Superseded by Act of March 9, Stats. 1866, p. 245, Sec. 69; see Sec. ~~3065~~, post.] 2667

Threatening letter.

2422. SEC. 116. If any person shall, knowingly, send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his house, or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his infirmities, though no money, goods, chattels, or valuable thing be demanded, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned in the County Jail not exceeding six months.

Opening sealed letters of another. 2423. SEC. 117. Every person who shall willfully open or read, or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it shall be addressed; and any person who shall maliciously publish the whole, or any part of such letter, without the authority of the writer thereof, or of the person to whom the same shall be addressed, knowing the same to have been opened, shall, upon conviction, be punished by a fine not exceeding one thousand dollars.

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILLITY. ([a])

Disturbing the peace. 2424. SEC. 118. If any person shall, maliciously and willfully, disturb the peace or quiet of any neighborhood, or family, by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding two hundred dollars, or imprisonment in the County Jail not more than two months.

Assembling to disturb the peace. 2425. SEC. 119. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse, on being desired or commanded so to do by a Judge, Justice of the Peace, Sheriff, Coroner, Constable, or other public officer, the persons so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisonment in the County Jail not more than six months.

Affray. 2426. SEC. 120. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this State, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the County Jail not more than one month.

Unlawful assemblage 2427. SEC. 121. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be severally fined in a sum not exceeding two hundred dollars, or imprisoned in the County Jail not exceeding three months.

Rout and riot. 2428. SEC. 122. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined in a sum not exceeding five hundred dollars, or imprisonment in the County Jail not more than six months; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel, or even do a lawful act, in a violent, tumultuous, and illegal manner, they shall be deemed guilty of a riot, and, upon conviction thereof, shall be fined in any sum

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(a) See Stats. 1866, p. 248, Sec. 87, et seq., Sec. ~~3083~~ 2685, et seq., post.

not exceeding five hundred dollars each, or by imprisonment in the County Jail for any term of time not exceeding six months, or both by such fine and imprisonment.

2429. SEC. 123. Every person who shall willfully disquiet or disturb any congregation, or assembly of people met for religious worship, by making a noise, or by rude or indecent behavior, or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the County Jail not exceeding three months. **Disturbing religious meetings.**

2430. SEC. 124. Every person who shall erect or keep a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or fermented liquors, or any drink of which wine, spirituous, or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars. (a) **Selling liquor at camp-meetings.**

(a) Selling liquors, etc., to Indians.—Stats. 1862, p. 27; see Sec. 2476, post. Selling liquor on election day.—Stats. 1873, p. 197; see Sec. 2595. Sale to minors.—Sec. 2480.

2431. SEC. 125. [Superseded by Act of March 9, Stats. 1866, p. 245; Sec. 70; see Sec. 3066, post]

2432. SEC. 126. A libel is a malicious defamation, expressed either by printing, or by signs, or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule; every person, whether the writer or the publisher, convicted of the offense, shall be fined in a sum not exceeding five thousand dollars, or imprisoned in the County Jail not exceeding six months. In all prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motive and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact. **Libel.** **Truth may be given in evidence.**

OFFENSES AGAINST PUBLIC MORALITY, HEALTH, AND POLICE.

2433. SEC. 127. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this State being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the State Prison not less than one year nor more than five years. It shall not be necessary to prove either of the said marriages by the register and certificate thereof, or other record evidence, but **Bigamy.**

Same.

the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this State, cohabitation in this State after such second marriage shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is or shall be, at the time of such second marriage, divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

Marrying a married person.

2434. SEC. 128. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not less than one thousand dollars, or imprisoned in the State Prison not less than one nor more than two years.

Incest.

2435. SEC. 129. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the State Prison not less than one nor exceeding ten years.

Obstructing highway or stream.

2436. SEC. 130. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any city, town, or village, or any public bridge or causeway, mill race, mill dam, or ditch, or public river or stream, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall, in any wise, pollute or obstruct any watercourse, lake, pond, marsh, or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, city, town, village, or neighborhood thereabouts, every person so offending shall, upon conviction, be fined not exceeding one thousand dollars, and every such nuisance may, by order of the Court before whom the conviction may take place, or of the District Court, be removed and abated by the Sheriff of the county.

Selling diseased meat, unwholesome provisions, or adulterated liquors.

2437. SEC. 131. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any poisonous or adulterated drink or liquors, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the County Jail not more than six months.

Defacing or tearing down advertisements.

2438. SEC. 132. If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States, or of this State, or any proclamation, advertisement, or notification, set up at any place in this State, by authority of any law of the United States, or of this State, or by order of any Court, such person, on conviction, shall be fined not more than one hundred dollars, nor less than twenty dollars, or be imprisoned in the County Jail not more than one month; *provided*, that this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, notification, advertisement, or order, after the time for which the same was by law to remain set up shall have expired.

Possessing implements for burglary.

2439. SEC. 133. If any person shall be found having upon him or her any picklock, crow-key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods and chattels, every person so offending shall, on conviction thereof, be imprisoned in the State Prison not less than one year nor more than five years; and if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the County Jail not more than three months.

Carrying weapons with intent

Refusing to join posse.

2440. SEC. 134. Every male person, above eighteen years of age, who shall neglect or refuse to join the posse comitatus, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any Sheriff, Deputy Sheriff, Coroner, Constable, Judge, or Justice of the Peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty, nor more than one thousand dollars, or shall be imprisoned in the County Jail for a period of thirty days, or both such fine and imprisonment. (a)

(a) Persons neglecting to aid magistrate.—Act of March 9, 1866, p. 248, Sec. 89; see Sec. 2687, post.

OFFENSES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

Fraudulent conveyances.

2441. SEC. 135. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in, use, avow, maintain, justify, or defend the same, or any of them, as true and done, had or made, in good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisonment in the County Jail not less than six months.

Obtaining credit by false representations.

2442. SEC. 136. If any person, by false representations of his own wealth, or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause, or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisonment in the County Jail not more than six months.

False pretenses.

2443. SEC. 137. If any person or persons shall, knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and, on conviction, shall be fined not exceeding one thousand dollars, and imprisoned in the County Jail not more than six months, and be sentenced to restore the property so fraudulently obtained, if it can be done.

Fraudulently selling real estate.

2444. SEC. 138. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands or town lot or lots, who shall again, knowingly and fraudulently, sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the State Prison not less than one year or more than five years.

False weights or measures.

2445. SEC. 139. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and, on conviction, shall be fined not exceeding two hundred dollars, and imprisoned in the County Jail not more than six months.

Removal of property to defraud.

2446. SEC. 140. If any debtor shall fraudulently remove his property or effects out of this State, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the County Jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

2447. SEC. 141. Any person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of such property or effects, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section. **Fraudulent concealment, etc., of property**

FRAUDULENT AND MALICIOUS MISCHIEF.

2448. SEC. 142. Every person who shall willfully administer any poison to any cattle or domestic animal, or maliciously expose any poisonous substance with the intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, on conviction, be punished by imprisonment in the State Prison not less than one year nor exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. **Poisoning cattle.**

2449. SEC. 143. Every person who shall cruelly beat or torture any horse, ox, mule, or other animal, whether belonging to himself or to any other person, shall be punished by a fine of not less than thirty or more than one hundred dollars, or by imprisonment in the County Jail or prison of any incorporated city or town, for a period not to exceed thirty days, or by both such fine and imprisonment; and it is hereby made the duty of each Sheriff, Constable, police officer, Justice of the Peace, Police Judge, or City Recorder within this State to enforce the provisions of this section of this Act. And every person who shall willfully, unlawfully, and maliciously destroy, burn, cut, or otherwise injure any goods, chattels, or property of any description whatever belonging to another, shall, upon conviction, be punished by fine of not more than five hundred dollars, or by imprisonment in the County Jail not exceeding six months, or by both such fine and imprisonment. [As amended February 27, Stats. 1866, p. 138.] **Injuring animals and goods.**

2450. SEC. 144. Every person who shall willfully, unlawfully, and maliciously break, destroy, or injure the door or window of any dwelling house, shop, store, or other house or building, or the door, window, grating, platform, wheels, or other part of any railroad car, or sever therefrom, or from any gate, fence, or inclosure, any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure, or destroy any gate, post, railing, or fence, or any part thereof, or break, destroy, or injure any steamer or other sailing craft, or cut down, lap, girdle, or otherwise injure or destroy any fruit, or ornamental, or shade tree, being the property of another, shall, on conviction, be fined not more than two hundred dollars, **Injuring dwelling house.**

or imprisoned in the County Jail not exceeding six months. [As amended March 7, Stats. 1873, p. 144.]

Injuring rafts, etc.

2451. SEC. 145. Every person who shall willfully and maliciously burn, injure, or destroy any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose, or set adrift any such raft or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the County Jail not exceeding six months.

Injuring property of water companies.

2452. SEC. 146. Every person who shall willfully and maliciously cut, break, injure, or destroy any bridge, mill dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully or maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisonment in the State Prison not less than one year nor more than two years, or both such fine and imprisonment.

Injuring jail, etc.

2453. SEC. 147. If any person shall, willfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of the said jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the State Prison for any term not exceeding five years nor less than one year.

Firing woods or prairies.

2454. SEC. 148. If any person or persons shall, willfully and intentionally, or negligently and carelessly, set on fire, or cause or procure to be set on fire, any wood, prairies, grass, or other lands, or grounds, in this State, every person so offending shall, on conviction, before any Court of competent jurisdiction, be fined in any sum not less than two hundred nor more than one thousand dollars, or by imprisonment in the County Jail not less than ten days, nor more than six months, or by both such fine and imprisonment, in the discretion of the jury trying the case; *provided*, that this section shall not extend to any person or persons who shall set on fire any wood, prairies, grass, or other lands adjoining their own farm, house, plantation, or inclosure, for the necessary preservation thereof from accident or injury by fire, by giving to his, her, or their neighbors reasonable notice of such intention.

MISCELLANEOUS OFFENSES.

Issuing paper money.

2455. SEC. 149. If any person or persons, association, company, or corporation, shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company, or corporation, or the persons forming the same, shall, for the first offense, be deemed guilty of a misdemeanor, and for each and every subsequent offense, be deemed guilty of felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this Act, shall be punished, for the first offense, by imprisonment in the County Jail not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second and every subsequent offense, shall be punished by imprisonment in the State Prison for a term not less than one year nor more than five years, at the discretion of the Court before whom such person or persons shall be tried and convicted. It shall be the duty of the District Attorney for each judicial district in the State to prosecute all offenses against this Act, and it shall be the duty of the Judges of the Courts to give this law in the charge of the grand jury, who shall inquire into and present all cases of a violation thereof.

Same.

Duties of District Attorneys in relation thereto.

2456. SEC. 150. Any person or persons who shall vend, by wholesale or retail, any spirituous, or malt, or vinous liquors, or any goods, wares, or merchandise, within any county in this State, without first obtaining a license so to do, as required by law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any Court of competent jurisdiction, be fined in a sum of not less than twenty-five nor more than two hundred dollars, for each and every offense. Any Justice of the Peace of the county in which such offense is charged to have been committed, shall have jurisdiction to try and determine the same. Upon the trial of any criminal action provided for by this Act, the defendant shall be deemed not to have procured any such license, unless he prove the contrary to the satisfaction of the Court or jury by whom the same is tried. All fines collected under this Act shall be paid into the treasury of the county in which the conviction is had.

Vending without license.

Jurisdiction of offense.

Fines, how disposed of.

GENERAL PROVISIONS.

2457. SEC. 151. All offenses recognized by the common law as crimes, and not herein enumerated, shall be punished, in case of felonies, by imprisonment in the State Prison for a term not less than one year nor more than five years, and in case of misdemeanors, by imprisonment in the County Jail for a term not exceeding six months or less than one, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment; and whenever any fine is imposed for any felony or misdemeanor, whether such by statute or at common law, the party upon whom the fine is imposed shall be committed to the County Jail, when not sentenced to the State Prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

Common law crimes, how punished.

2458. SEC. 152. Until a State Prison is provided, the County Jail of each county shall be deemed the State Prison.

State Prison.

2459. SEC. 153. A sentence of imprisonment in the State Prison, for a term less than life, suspends all civil rights of the person so sentenced, during the term of imprisonment, and for-

Effect of sentence of imprisonment.

feits all public offices, and all private trusts, authority, and power; and the person sentenced to such imprisonment for life, shall thereafter be deemed civilly dead.

The term "prison" defined.

2460. SEC. 154. Where the term "person" is used in this Act to designate the party whose property may be the subject of any offense, such term shall be construed to include the United States, this State, or any other State or Territory, government, or county, which may lawfully own any property within this State, and all public and private corporations, as well as individuals.

This Act extended to females.

2461. SEC. 155. The provisions of this Act shall extend to females.

Intent to injure, what sufficient to be shown.

2462. SEC. 156. When any intent to injure, defraud, or cheat, is required by law to be shown, in order to constitute any offense, it shall be sufficient if such intent be to injure, defraud, or cheat the United States, this State, or any other State, Territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individuals.

Reward may be offered.

2463. SEC. 157. If any person, who has been sentenced to confinement in the State Prison, by any Court having competent authority within this State, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the Governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or their apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the General Fund.

Attempt to commit offenses.

2464. SEC. 158. Every person who shall attempt to commit a public offense, and in such attempt shall do any act toward the commission of such offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows: First—If the offense so attempted to be committed be such as is punishable by death or by imprisonment in the State Prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the State Prison not exceeding ten years. Second—If the offense so attempted is a misdemeanor, the person so convicted of such attempt shall be punishable by a fine not exceeding one half of the largest amount, or by imprisonment in the County Jail, or State Prison, as the case may be, for a term not exceeding one half of the longest time prescribed by law, upon a conviction of the offense so attempted. Third—If the offense so attempted is a felony, not punishable by death or imprisonment, which may extend to life, the person convicted of such offense shall be punished by imprisonment in the State Prison, for a term not exceeding one half the longest time which may be imposed upon a conviction of the offense so attempted.

This Act not to affect pending proceedings.

2465. SEC. 159. Nothing in this Act shall be construed to affect any criminal proceedings or prosecution now pending in any of the Courts of this State, but the same shall be prosecuted to judgment and execution in the same manner as if the

Act had not been passed. And all persons charged, or who may hereafter be charged, with crimes or misdemeanors, under the laws now in force, shall be prosecuted to the same extent that they might have been had no Act on the subject been passed.

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," approved November twenty-sixth, eighteen hundred and sixty-one.

[Approved March 1, 1866, p. 166.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

2466. SECTION 1. Every person lawfully confined in the State Prison of the State of Nevada, under judgment of imprisonment in said prison, who shall escape therefrom, or break out of such prison, or make any overt attempt to escape from or break out of such prison, shall, on conviction thereof, be punished by imprisonment in the State Prison not less than one nor more than ten years. **Punishment for breaking prison.**

2467. SEC. 2. Every person lawfully confined in a County Jail, or in the custody of any officer or person, under a lawful arrest, who shall escape or break away from such officer or person, or shall escape from or break out of, or attempt to escape from or break out of, such jail, shall, on conviction thereof, be punished by a fine of not less than one hundred and not more than five thousand dollars, or by imprisonment in the County Jail for a term not less than one month, and not more than one year, or by both such fine and imprisonment; and in case such person is under arrest, or confined in jail, upon a charge of felony, and so escape, or break away from, such arrest, or escape from, or break out of, or attempt to break out of, such jail, then, upon conviction, he shall be punished by imprisonment in the State Prison not less than one nor more than ten years. **Punishment for escaping from jail or officer.**

2468. SEC. 3. Any person confined in the State Prison of this State, or in any County Jail, under a sentence of a Court of competent jurisdiction, who, during the term of his imprisonment, shall, after the passage of this Act, escape from such State Prison or County Jail, and be retaken, may, upon conviction thereof, be imprisoned in the State Prison for a term not exceeding ten years, nor less than one year, which term of imprisonment shall commence at the expiration of the term for which he shall have been sentenced for the original offense. **Punishment for escaping from State Prison or jail.**

2469. SEC. 4. The expenses and costs of prosecuting any person or persons for escaping from, or breaking out of, the State Prison, or attempting so to do, or for the commission of any crime while a prisoner therein, shall be a State charge, and shall be paid as other expenses of the State Prison. **Expenses and costs, how paid.**

2470. SEC. 5. If one or more persons, lawfully imprisoned in the State Prison, shall, separately or together, escape, or shall, separately or together, attempt to escape from such **Punished for murder, when.**

prison; and being so engaged, he, they, or either of them, shall cause the death of any human being in making, or attempting to make, such escape, the prisoner or prisoners causing such death shall be deemed guilty of murder in the first degree, and, on conviction thereof, shall suffer death.

Prisoner may be tried pending term of imprisonment.

2471. SEC. 6. Where any person or persons, under sentence of imprisonment not expired, shall commit any crime or offense against the law, he or they may be tried pending his or their term of imprisonment, and, upon conviction, the judgment of the Court shall be rendered for the sentence to commence upon the expiration of the former sentence, if the punishment be one of imprisonment; but if the punishment be of death, the sentence shall be executed without reference to the unexpired term of imprisonment.

An Act to prohibit marriages and cohabitation of whites with Indians, Chinese, mulattoes, and negroes.

[Approved November 28, 1861, p. 93.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Intermarriage prohibited.

2472. SECTION 1. If any white man or woman intermarry with any black person, mulatto, Indian, or Chinese, the parties to such marriage shall be deemed guilty of a misdemeanor, and, on conviction thereof, be imprisoned in the State Prison for a term not less than one year nor more than two years.

Persons performing marriage ceremony guilty of misdemeanor.

2473. SEC. 2. If any person authorized to perform the marriage ceremony shall unite any such person as mentioned in this Act in marriage, he shall be deemed guilty of a misdemeanor, and, on conviction, be subject to imprisonment in the State Prison for a period not less than one year nor more than three years.

Cohabitation with, misdemeanor.

2474. SEC. 3. That if any white person shall live and cohabit together with any black person, mulatto, Indian, or Chinese, in a state of fornication, such person so offending shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars and not less than one hundred dollars, or be imprisoned in the County Jail not less than one nor more than six months, or both such fine and imprisonment, as the Court may order.

Fines, how applied.

2475. SEC. 4. All fines collected under this Act shall be paid into the treasury of the county in which the conviction is had, and set apart for the Common School Fund of the State.

An Act to prohibit the sale of ardent spirits, firearms, or ammunition to the Indians.

[Approved December 17, 1862, p. 27.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

2476. SECTION 1. Any person who shall, after the passage of this Act, sell, barter, give, or in any manner dispose of any spirituous or malt liquors, or any firearms or ammunition of any description whatever, to any Indian within this State, shall be deemed guilty of a misdemeanor, and, upon due conviction thereof before any Court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the County Jail for any time not exceeding six months, or by both such fine and imprisonment, in the discretion of the Court. **Penalty for.**

2477. SEC. 2. Justices of the Peace, within their respective counties, shall be considered Courts of competent jurisdiction within the meaning of this Act. **Jurisdiction of Justices' Courts.**

ERRATA.

At Sec. 2334 read "See Sec. 2679."
At Sec. 2375 read "See Sec. 2652."
At Sec. 2376 read "See Sec. 2653."
At Sec. 2377 read "See Sec. 2654."
At Sec. 2380, note (a), read "See Sec. 2652."
At Sec. 2398 read "See Sec. 2648."
At Sec. 2399 read "See Sec. 2649."
At Sec. 2400 read "See Sec. 2650."
At Sec. 2401 read "See Sec. 2659."
At Sec. 2402 read "See Sec. 2660."
At Sec. 2403 read "See Sec. 2661."
At Sec. 2404 read "See Sec. 2662."
At Sec. 2409 read "See Sec. 2663."
At Sec. 2413 read "See Sec. 2664."
At Sec. 2414 read "See Sec. 2665."
At Sec. 2419 read "See Sec. 2651."
At Sec. 2420 read "See Sec. 2666."
At Sec. 2421 read "See Sec. 2667."
At Sec. 2424, note (a), read "See Sec. 2685 et seq."

In resectionizing the Compilation the above corrections were inadvertently omitted.